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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1989

Addendum

BELGIUM*

[23 May 1991]

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* For the initial report submitted by the Government of Belgium, see document CCPR/C/31/Add.3; for its consideration by the Committee see CCPR/C/SR.815, SR.816, SR.821 and SR.822 and Official Records of the General Assembly, Forty-third session, Supplement No. 40 (A/43/40), paras. 461 to 507.

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INTRODUCTION

1. The Government of Belgium presents its second periodic report on the implementation of the International Covenant on Civil and Political Rights. This report deals with the measures adopted by Belgium, giving effect to the rights recognized in the Covenant and indicating the progress achieved in the enjoyment of those rights since the first report. This report follows upon the initial report, which Belgium prepared in 1987 and presented to the Human Rights Committee in July 1988 (CCPR/C/31/Add.3).

2. In connection with the various articles of the Covenant, information is given below on the developments that have occurred in Belgian legislation since the introduction of the first report, as well as any changes noted in the exercise of the various rights mentioned in the Covenant.

I. GENERAL COMMENTS CONCERNING THE PLACE OF THE COVENANT IN INTERNAL LAW

3. In Belgium, in order for the provisions of an international treaty to be incorporated in internal law, the treaty must be approved by the legislative chambers, in accordance with article 68 of the Constitution, ratified by the Crown as a branch of the Executive and brought to the attention of the citizens by its publication in the Moniteur belge.

4. The International Covenant on Civil and Political Rights was approved by Parliament on 15 May 1981, ratified by the Crown on 21 April 1983 and published in the Moniteur belge on 6 July 1983. Its provisions therefore form part of internal law and are binding. Once the provisions of an international treaty have been incorporated into internal law, the question arises of their legal effects and, in particular, whether they may be invoked directly by individuals in national courts. The problem is that of the direct applicability of the provisions of an international treaty.

5. When no provision of an international treaty determines expressis verbis whether all or part of its provisions have a direct effect in the internal law of the contracting States, under Belgian law it is for the court to decide whether a treaty provision is directly applicable. The problem is one of interpretation which the court must resolve, mainly in the light of articles 31 to 33 of the Vienna Convention on the Law of Treaties, of 23 May 1969. In Belgium, it is generally recognized that an international provision produces direct effects when it is clear and comprehensive, when it requires the Belgian State either to refrain from action or to act in a specific manner and when it may be invoked as a source of law by individuals without need for any additional internal legislation for the purpose of implementation.

6. The International Covenant on Civil and Political Rights does not determine specifically whether its provisions are directly applicable. Consequently, in accordance with the principles mentioned above, direct applicability is a matter that must be settled by the court. This is what the Court of Cassation of Belgium did in a decision of 17 January 1984 by affirming that article 9, paragraph 2, of the Covenant produced direct effects

in internal law for individuals. Since then, the Court of Cassation has confirmed such direct applicability in the case of other provisions of the Covenant.

7. The legal effect of the provisions of an international treaty also depends on their recognized place in the hierarchy of internal law in the event of conflict with national provisions. In Belgium, several attempts have been made, in the course of constitutional review procedures, to incorporate into law a general principle designed to bring the authority of treaties into line with that of the provisions of internal law. Thus far, all those attempts have failed. Consequently, the Court of Cassation provided the solution, in a decision on 27 May 1971 in the case of S.A. Fromagerie Franco-Suisse Le Ski. The Court affirmed the primacy of provisions of international treaties having direct effects in internal law over provisions of national origin, even subsequent ones. A Belgian court may therefore apply national provisions only if they are compatible with those of international treaties directly applicable in internal law. It verifies, inter alia, the conformity of national law with the directly applicable provisions of the Covenant. This had been done in the case of the aforementioned decision of 17 January 1984 by the Court of Cassation.

II. INFORMATION RELATING TO ARTICLES 1 TO 27 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 1

8. In order to complete paragraph 16 of the initial report, it should be explained that by law (the Special Act relating to Brussels institutions and the Act regulating procedures for the election of the Council for the Brussels-Capital Region, see annexes 1 (a) and 1 (b)), following the elections of 18 June 1989, the Brussels region now has a Council made up of directly elected representatives and an Executive appointed from within the Council.

9. The amendments to the Belgian Constitution since the early 1970s include the reforms relating to the protection of young persons. The effect of the reforms was to assign, in 1980, certain powers in that regard to the Flemish, French and German-language Communities. A precise demarcation of these powers has, however, given rise to much discussion - mainly regarding the judicial protection of young persons - and both the Council of State and the Court of Arbitration have found it necessary to take decisions - the Council in an opinion of 20 June 1984 and the Court in a judgement of 30 June 1988. The question was finally settled in August 1988 by the legislature, which clarified the principles already adopted in 1980 (see annex 2). Article 2 of the Act of 8 August 1988 amending the Act of 8 August 1980 on institutional reforms, ensures that protection of young persons, including social and legal protection, comes within the competence of the Communities, with the exception of:

(a) Rules of civil law relating to the status of minors and the family, as established by the Civil Code and additional laws;

(b) Rules of criminal law whereby an act that is in breach of the protection of young persons is an offence and whereby penalties are laid down for such breaches, incuding the provisions relating to prosecution, without prejudice to article 11 of the Special Act of 8 August 1980 on institutional reforms;

(c) Organization, jurisdiction and proceedings of juvenile courts;

(d) Determination of the measures which may be taken against minors who have committed an act classified as an offence;

(e) Loss of parental authority and the management of family allowances or other social benefits.

Because of the "Communitarization", it is planned to make radical changes in the Protection of Young Persons Act of 8 April 1965, to which reference is made on several occasions in the report.

10. The Flemish Community adopted a Decree on Special Assistance to Young Persons on 27 June 1985 (annex 3) reorganizing social protection of young persons in that Community. Due to the latent conflicts of jurisdiction between the Flemish Community and the national power, the decree was only published in the Moniteur belge on 5 July 1986. A Decree of 4 June 1986 (annex 3 (a)), also published on 5 July 1986, conferred on the Flemish Community Executive the power to set the dates on which the various provisions of the Decree of 27 June 1985 would enter into force. The implementation of that decree was deferred until the Court of Arbitration settled the conflict of jurisdiction which had emerged when the decree was issued. On 23 February 1987, the (national) Council of Ministers submitted to the Court of Arbitration an application for annulment of the two decrees on the grounds of encroachment by the Flemish Community upon the competence of the national power. When the Court delivered its judgement on 30 June 1988 (annex 3 (b)) (one which was largely confirmed by the aforementioned Act of 8 August 1988), a Flemish Executive Order of 20 July 1988 (annex 3 (c)) supplemented by the Order of 14 December 1988 (annex 3 (d)), set 1 August 1988 as the date for the entry into force of virtually all the articles of the Decree of 27 June 1985, namely, the articles which had not been annulled, totally or partly, by the Court of Arbitration. The structures envisaged by the decree and necessary for implementation could not, however, be set up immediately, with the result that in August 1989 the decree was still not totally implemented in practical terms.

11. Although two orders, relating to the establishment and functioning both of welfare committees for young persons, the social services and the administrative secretariat for those committees as well as mediation commissions for special assistance to young persons and the administrative secretariat of these commissions were adopted on 20 July 1988 (annexes 3 (e), 3 (f) and 3 (f) bis), they were published only on 19 November 1988. The second of the Orders was amended by an Order of 31 May 1989 published on 11 August 1989 (annex 3 (g)). The Ministerial Order of 13 October 1988 (annex 3 (h)), published on 17 November 1988, set 1 December 1988 as the date for the welfare committees to begin their activities. The chairmen and members of the various committees (one for each judicial circuit) have all

been appointed, although certain special assistance offices for young persons, which are an integral part of these committees under the terms of the decree have not been constituted. The Ministerial Order of 31 May 1989 had appointed the chairmen and members of the mediation commissions but postponed the date for beginning operations until 1 October 1989. Moreover, a Flemish Executive Order of 12 October 1988 (annex 3 (i)), amended on 10 May 1989 (annex 3 (j)), relates to the establishment, membership and functioning of the commission established by article 24 of the Decree of 27 June 1985 concerning special assistance for young persons. The Order has been in force since 1 October 1988, but the commission it envisages has not yet been set up.

12. Since the judgement of the Court of Arbitration of 30 June 1988, followed by the Act of 8 August 1988 amending the special Act of 8 August 1980 on institutional reforms, declares the Communities equally competent to regulate legal protection of young persons - in all matters relating to juvenile delinquents - the Flemish Community Executive recently tabled in the Flemish Council (the equivalent of the national Parliament at the community level) a draft decree supplementing the Decree of 27 June 1985 in that regard.

13. The French Community is engaged in drawing up a preliminary draft decree on assistance to young persons. This preliminary draft brings together in a single text all the powers assigned to the French Community in respect of protection for young persons. It sets out the principles relating to the assistance to be provided by the French Community to young persons in danger - whether this aid is requested or accepted or whether it has to be imposed by the courts. It also deals with the execution of measures of assistance to minors in danger and measures to protect juvenile delinquents. The Flemish draft as well as the French preliminary draft abrogate for their respective Communities the articles of the Protection of Young Persons Act of 8 April 1965 relating to the questions covered in the drafts.

14. The German-language Community has not adopted any decree amending the Act of 8 April 1965 and does not seem to be about to do so, the result being that, in this Community, the Act as well as all implementing regulations, continue to be applied.

15. Lastly, the Minister of Justice has indicated his intention of amending those items in the Act of 8 April 1965 that continue to be addressed at the national level, including proceedings in juvenile courts and the determination of the measures which may be taken against juvenile delinquents.

16. The range of reforms adopted or in the course of adoption attest to the concern to guarantee respect for the fundamental rights of young persons better than in the past. They should, in any case, comply with the judgement by the European Court of Human Rights, which found against Belgium on 29 February 1988 on the ground of the use made by Belgian courts and tribunals of article 53 of the Act of 8 April 1965 whereby the judge can have a minor held temporarily in gaol (regardless of his age and even in the absence of an offence), for a period of not more than 15 days, if it proves impossible to find a person or an institution in a position to receive him straight away.

17. It will be noted that the "Communitarization" of the protection of young persons has led to the restructuring of the administration. Thus, the Office for the Protection of Young Persons, which is referred to on several occasions, has been split up and the staff transferred from the Ministry of Justice to the relevant ministries of the Communities.

Article 2

18. The rights recognized under the International Covenant on Civil and Political Rights are amply covered by Belgian law. The initial report considered various constitutional and legislative measures that guarantee all individuals enjoyment of those rights, without any distinction or discrimination.

(a) Principle of equality

19. With regard to the Act of 8 April 1965 providing for the social and judicial protection of young persons, the initial report showed that it applies to all minors who are on Belgian territory, without any distinction. As regards foreign minors who, according to their national law, attain their majority before the age of 21 (until 1 May 1990 the age of majority in Belgium), the question has arisen whether, in applying this Act, the age of majority as laid down by Belgian law or as laid down under the national law of the minor should be taken into account. In the absence of any specific court rulings in the matter, the administration sent a circular containing the interpretation of Minister of Justice, for guidance, to the authorities responsible for applying the Act, namely, the judicial authorities and committees for the protection of young persons. As a result, in some cases, young foreigners on Belgian territory do not enjoy the same protection as Belgians of the same age if they have reached the age of majority by reference to their national law, although they are minors under Belgian law.

20. For the period under review, it should be noted that this discrimination was scheduled to come to an end, on the one hand, because the National Parliament adopted the Act of 19 January 1990 (annex 4) establishing the age of majority at 18 and thereby bringing Belgium into line with most European countries and, on the other hand, because the various drafts for a reform of the Protection of Young Persons Act of 8 April 1965, including the draft and preliminary draft decrees of the Flemish and French Communities, specify an age-limit (which may be set after the age of majority) up to which they contemplate organizing assistance for young people, regardless of their nationality.

21. As regards religious and philosophical beliefs and language, the above-mentioned Act of 8 April 1965 expressly provides that "The judicial and administrative authorities, natural and legal persons, organizations, institutions and establishments responsible for cooperating in the measures taken pursuant to the present Act shall respect the religious and philosophical beliefs and the languages of the families to which the minors belong".

22. The Decree of the Flemish Community of 27 June 1985 relating to special assistance to young persons stipulates in article 9 (2) (8) that the social service and special assistance office for young persons shall respect the ideological, philosophical and religious beliefs of the individuals affected by problematic education situations for which they try to provide assistance. The draft decree amending the aforementioned Decree of 27 June 1985 proposes that this provision should be abrogated and replaced by a more general provision drafted as follows: "Any individual who, in any capacity whatever, cooperates in the implementation of this decree or a law relating to the determination of measures against minors having committed an act classified as an offence shall respect the religious, ideological and philosophical beliefs of the families to which the minors belong".

23. The reference to respect for the language of the family no longer appears in the text of the Flemish decree and the draft decree amending it. The reason is the linguistic determination of the territorial authority of each Community, which implies that the powers conferred by the Constitution and the resulting special laws on the Communities are implemented in the language of the particular Community, even if the sphere of application extends to all individuals on the territory of that Community, regardless of their language and nationality.

(b) Remedies

24. The effective remedies available under Belgian law to guarantee respect for the rights recognized in the Covenant were described for the period covered by the initial report.

The special position of minors with regard to remedies

25. Article 58 of the above-mentioned Protection of Young Persons Act of 8 April 1965 provides for remedies (appeal and application for retrial in the event of default judgement (opposition)) against all measures taken by the juvenile court with respect both to parents and to minors. As regards the latter, it should be noted that the court can adopt interim measures by decision of the judge for young persons sitting in chambers before the court delivers its decision in open court (art. 52). The same applies at the appeal stage (art. 59). Decisions taken in chambers by the judge for young persons or taken by the appeals court judge for young persons - when the other side is not heard - may likewise be the subject of an appeal or of an application for retrial.

26. It has been noted in practice, however, that appeals against interim measures decided with respect to minors are relatively infrequent, both because in these proceedings the other side is not heard, but also because under article 55 of the Act, the assistance of a lawyer is only mandatory at the trial stage. This is why several draft laws and bills that are currently obsolete but which may be expected to provide guidance for the preliminary draft law amending the Protection of Young Persons Act of 8 April 1965 which the Minister of Justice intends to table and which concerns his powers, including the procedure for the juvenile court, provide for the automatic appointment of a lawyer for a minor at the outset of the proceedings, that is, at the interim measures stage.

27. The remedies provided under article 58 of the Act of 8 April 1965 pose problems in three other cases:

(a) When a minor is sent, by a decision taken in chambers or by the courts to the State institutions system (art. 37(4)) - which now comes under the authority of the Communities - it is for the administration to decide which institution in the system the minor will be sent to and, in particular, whether he will be housed in an open or closed institution. In the latter - which cannot be compared to prisons, however, since they are basically educational - minors obviously find their freedom more restricted than in an institution of the open type. They have no direct remedy against the administration's decision to place them in a closed institution - or, indeed, in an open rather than any other institution. The only possible remedy lies against the court's decision to place them to the State institutions system. The administration, mindful of possible infringements of freedom, has been careful to issue circulars that afford certain safeguards for minors against wrongful confinement, at any rate as far as the French-speaking closed institutions are concerned.

Since the State Institutions System established by article 37(4) comes within the authority of the Communities, as the Court of Arbitration decided in its judgement of 30 June 1988, it is now for the Communities to define the conditions for being placed in such institutions. The draft decree supplementing and amending the Decree of 27 June 1985 concerning special assistance to young persons which was tabled in the Flemish Council entitles the juvenile court - and no longer the administration - to decide whether to send a minor (in danger or delinquent) to a Flemish Community specialized open institution or to a specialized closed institution.

Since each measure is distinct, the minor would have a direct remedy against a decision to refer him to a closed institution.

For its part, under the draft decree concerning assistance to young persons of the French Community, the general regulations will specify that the public institutions system for the protection of young persons, comprising open and closed regimes, will be used for juvenile delinquents. Admission to a closed environment can only be in a public institution that is part of the system and is set aside for young persons over the age of 14 prosecuted for an act classified as an offence or crime and placed in a closed institution by a court decision.

A French Community, Executive Order adopted on 18 July 1989 (annex 14) which will be considered in greater detail under article 10 of the Covenant anticipates these principles as far as the admission of juvenile delinquents to closed institutions is concerned.

(b) Under article 58 of the Act, the juvenile court can have a minor held in gaol temporarily for a period not longer than 15 days if it proves impossible to find a person or an institution in a position to receive him straight away. This measure, which may be taken on a temporary basis only - and never by a decision in which sides are heard - is, in theory, open to appeal, like all other measures. In practice, however, the very short duration of the measure itself (15 days) invariably results in the appeal

being declared inadmissible on the ground that it is pointless. The measure will, in fact, have ended by the time the Court of Appeal is called upon to take a decision. It should be noted that a temporary measure, like any measure of this kind, may be rescinded at any point by the court which took the decision or by the court sitting on appeal, either at its own motion or at the request of the minor or of his lawyer if he has one. Strictly speaking, however, this is not a remedy, since the judge retains full discretion to modify the decision.

In a judgement rendered on 29 February 1988, in the case of B., the European Court of Human Rights ruled against Belgium, taking the view, inter alia, that such a situation contravened article 5(4) of the European Convention on Human Rights. The above-mentioned draft and preliminary draft decrees dispense with the contentious article 53, in respect of minors in danger. Moreover, the main object of the draft law amending the Protection of Young Persons Act of 8 April 1965 on which the Minister of Justice has begun work and which he wishes to submit rapidly to the Chambers is to bring Belgian legislation relating to young offenders and to proceedings in the juvenile court into line with the European Convention on Human Rights, pursuant to the Bouamar judgement.

At the present time, a positive trend can be observed in court practice since most juvenile courts no longer apply article 53, in view of the finding against Belgium at Strasbourg. There are, unfortunately, certain instances of its application, and they are usually strongly contested by the Belgian press when it is aware of them. The explanation - but not the justification, for these cases is to be found in the lack of appropriate infrastructure, particularly closed institutions, from which the French-speaking part of the country continues to suffer. The French Community is currently endeavouring to rectify these deficiencies, inter alia, by setting up reception sections in the public institutions.

(c) Prior to the entry into force, on 1 January 1989, of the Act of 8 August 1988, amending the Act of 8 August 1980 on institutional reforms, which made the protection of young persons a Community matter once and for all, when a minor was placed at the disposal of the government authorities under article 39 of the Act of 8 April 1965 (a measure that could be taken only by a judicial decision after both sides had been heard), there was, of course, a remedy against that decision. Once the measure became final, however, there was no longer any remedy against the decisions taken with respect to the minor by the government authorities pursuant to that measure and, in particular, against the decisions of the Minister of Justice taken pursuant to article 41, including detention in a prison establishment.

The effect of the implementation of the Act of 8 August 1988 was to make the Communities responsible for the overall implementation of the Act of 8 April 1965, including the practical enforcement of all the measures taken by juvenile courts. It was considered that the Act of 8 April 1965 had been implicitly amended whenever it referred to the government authorities or to the Minister of Justice and that those terms should henceforth be replaced respectively by those of the Executive of the competent Community and the Minister of the competent Community responsible for the protection of young persons.

28. As the situation created by article 41 of the Act of 8 April 1965 occasioned virtually unanimous criticism, the Ministers of the French Community and of the Flemish Community responsible for the protection of young persons informed the judicial authorities, by circular, on 9 February 1989 and on 14 April 1989 addressed to the Prosecutor Generals attached to the Courts of Appeal that, being vested with the powers previously conferred by article 41 on the Minister of Justice, they would no longer detain minors placed at the disposal of the government authorities in a prison establishment. In view of the aforementioned criticisms, the draft and preliminary draft decrees of the Flemish and French Communities, to which reference has frequently been made envisage the abrogation of articles 39 and 41 of the Act of 8 April 1965 in respect of minors in danger. There can be no doubt that the draft law amending the Act of 8 April 1965 that is in the process of preparation, at the request of the Minister of Justice, will also provide for the abrogation of these articles with regard to juvenile delinquents.

29. It was noted earlier that the Act of 8 April 1965 does not provide for any remedy against decisions taken by the Committee for the Protection of Young Persons, since action by the Committee is subject to the consent of the persons who have custody of the minor. Wherever such consent is lacking, the action of the Committee for the Protection of Young Persons automatically ceases.

30. With regard to the welfare committees for young persons which have replaced the Committees for the Protection of Young Persons since 1 December 1988 in the Flemish Community, the decree of 27 June 1985 concerning special assistance to young persons provides for the establishment in each judicial circuit of a mediation commission responsible for attempting to settle, at the request of either party, disputes between, on the one hand, young persons and their families and, on the other hand, the welfare committee offices for young persons that are responsible for providing them in practice, and with their consent, with the special assistance envisaged by the decree. In the absence of an amicable agreement, the mediation commission decides either not to proceed with the case or to refer it, in the interests of the minor, to the juvenile court, which then takes over the file.

31. In the French Community, the draft decree on assistance to young persons states that the Committees for the Protection of Young Persons will be replaced in each judicial circuit by two separate entities: one responsible mainly for general prevention (the circuit council for assistance to young persons) and one (the adviser on assistance to young persons) responsible for providing on an individual basis to young persons and their families, with their consent, the special assistance envisaged by the decree. The decree provides that disputes between, on the one hand, young people and their families and, on the other hand, the advisers will be settled by the juvenile court, which will arbitrate the dispute without taking over the file, which will be left with the adviser.

32. The Belgian Constitution, in article 6, paragraph 2, states that all Belgians are equal before the law. All persons in the same situation must be treated in the same way. The legislature may only depart from that principle in special cases and in so far as such derogations are justified.

Equality between men and women

(a) Employment

33. Belgium has taken steps in law to rule out all forms of discrimination in employment (access to employment, conditions of work), vocational training, advancement and access to self-employed occupations. The Economic Reorientation Act of 4 August 1978 stipulates in title V that any discrimination based on sex, either directly or indirectly is prohibited.

34. Section I deals with access to employment, advancement and to self-employed occupations. Equality of treatment must be ensured in the provisions for and practices relating to conditions of access and selection (including criteria for selection). This principle applies to jobs or posts and to self-employment whatever the sector and the activity and at all levels in the occupational hierarchy (art. 121). In particular article 121 specifies that it is prohibited to make gender-specific references in offers of employment or in announcements for employment or promotion or in the conditions of access, selection and criteria for selection. Implicit references to gender are equally prohibited. Similarly it is not permitted to refuse or to hinder access to employment or advancement on explicit or implicit grounds directly or indirectly relating to the sex of the worker. The Act provides that exceptions may be granted by royal decree, as was the case for mannequins, models and certain artistic professions.

35. Section 2 concerns access to vocational training. It deals with counselling, training, apprenticeship, further training or retraining and social promotion, as well as information or advertising in this area. Equality of treatment must be ensured for everyone both in the public and in the private sector. There must also be equal treatment in access to examinations and in the conditions for obtaining and issuing all types of diplomas, certificates and qualifications of any kind (art. 125). Article 125 states in particular that gender-specific references in the conditions or criteria relating to counselling and to types of training are prohibited, as are presentation in the information or advertising of counselling and types of training better suited to persons of one sex than the other, the refusal or hindrance of access to counselling and training; or to the establishment, according to sex, of different conditions for obtaining or issuing diplomas, certificates and qualifications of any kind.

36. Section 3 concerns conditions of work and dismissal. Article 127 specifies that equal treatment must be ensured for workers in all provisions and practices relating to conditions of work and dismissal. In particular, gender-specific references in the conditions of work and in the conditions, criteria or grounds for dismissal are prohibited as is the use in these conditions, criteria or grounds of items which are even implicitly discriminatory, and the establishment or application of conditions, criteria or grounds that discriminate according to the sex of the worker.

37. Any person who considers himself the object of discrimination may bring an action in the Labour Court. Organizations representing workers, professional organizations representing the public services and organizations representing self-employed workers may go to law to defend their members rights. A complaint may also be submitted to the Inspectorate of Social Laws. The Court may enjoin the persons responsible - employers or others - to put an end to the situation of discrimination in vocational training, conditions of work and conditions and criteria for dismissal. Persons who contravene the Act of 4 August 1978 are liable to punishment. Any worker who has submitted a complaint on the basis of the Act may not be dismissed for that reason. Collective Agreement No. 25, rendered mandatory by the Royal Decree of 9 December 1975, concerning equal remuneration for male and female employees, is still in force. In practice, it will be observed that recourse to legal possibilities tends to be rare.

38. The Act of 4 August 1978 also provides for measures to promote equal opportunity between men and women, particularly with a view to removing de facto inequalities which stand in the way of opportunities for women. However, these measures are still to be made binding by decree.

On 14 July 1987, a Royal Decree was issued concerning measures to promote equal opportunity between men and women in the private sector (annex 6). In the private sector, the promotion of equal opportunity is voluntary. In addition, the inter-occupational agreement reached last year between the social partners establishes that positive action is a subject for negotiation at the sectoral level. Recently, positive action was included in the collective agreements of two joint employee/employer committees, particularly the committee for department stores and the additional joint committee for employees. As to the public sector, a Royal Decree concerning measures to promote equal opportunities between men and women in the public service was approved by the Council of Ministers. The trade union organizations also agreed to it. The draft of the Royal Decree has been submitted to the Council of State for a formal opinion.

Specific initiatives concerning positive action in enterprises

39. All Belgian enterprises employing more than 100 workers received the "Practical guide to positive action in firms" in April 1988, prepared by the Cabinet of the Minister of the Environment and Social Emancipation (annex 7). It emerged, however, that a practical method was not sufficient to induce firms to initiate positive action; a further document, entitled "Additional information on positive action in firms", was therefore sent out to them (annex 7 bis).

It is, in effect, essential to create initial awareness among firms and to motivate them by stressing the advantages of positive action. This prompted the Minister for Social Emancipation to draw up positive action agreements with them, whereby the contracting firm undertakes to develop and implement a positive action plan by the method set out in the "Practical guide". To match this the Minister undertakes to make experts on the subject available to the firm. The agreement is for a period of one year and is extended by tacit agreement from one year to another, unless one of the

parties terminates it. Agreements have already been concluded with some 30 firms, large and small, in various sectors. Signed contracts are to be found in the following sectors: computers, chemicals, electronics, hotels and restaurants, transport, metallurgy, etc.

(b) Political rights

40. In Belgium, both men and women have the right to the passive and active vote. In other words, formal and legal equality between men and women is a reality as far as political rights are concerned. However, women are under-represented at all levels in political posts and in 1989, only accounted on average for 14 per cent of commune councillors, 12 per cent of provincial councillors and 8 per cent of parliamentarians.

41. On the basis of this finding and in the interests of political action, the Belgian Government, through the Minister for Social Emancipation, developed a policy intended to stimulate the balanced participation of men and women in politics. He began by inviting the women's groups in the political parties to sign the "Charter of Women in Politics". This Charter, which came into being on 22 March 1988, calls for equal participation by men and women at all political levels, as a matter of priority. Subsequently, with a view to the commune elections of 9 October 1988, the Minister for Social Emancipation launched a consciousness-raising campaign with the slogan "Vote for more balance in your commune council". The declared intention of this campaign was informative and educational and the purpose was to enhance the awareness of the entire electorate, both men and women, of the low level of participation of women in politics and to draw their attention to the fact that their right to vote afforded them an opportunity to change the situation. The commune elections were a step in the right direction, since the number of women elected rose from 11 to 14 per cent.

42. These activities to encourage the participation of women in local politics were extended when the Minister for Social Emancipation launched an initiative in the spring of 1989 in the form of a ten-point programme for a commune emancipation policy, the purpose of which was to urge the commune authorities to promote and encourage local emancipation of women.

43. Lastly, on 14 July 1989 the Council of Ministers, on the proposal of the Minister for Social Emancipation, approved a bill on balanced representation of men and women in advisory bodies. This bill applies to all bodies responsible nationally for giving opinions to the Chamber, the Council of Ministers, to one or more ministers, or ministerial departments or services. It specifically provides that, for each seat to be assigned by proposal within an advisory body, a double list with the candidatures of a man and of a women should be presented.

Further information regarding the distinction between civil and political rights

44. When it considered Belgium's initial report the Human Rights Committee requested further details about the distinction between civil and political rights as set out in articles 92 and 93 of the Belgian Constitution. The promised reply can be found below (see CCPR/C/SR.821, para. 30).

45. The Constitution recognizes only two categories of subjective rights - the civil rights set out in article 92, which provides that disputes concerned with civil rights are within the exclusive competence of the courts, and the political rights set out in article 93 which states that disputes concerning political rights are within the competence of the courts, excluding the exceptions established by the law. Since the text of the constitution only governs protection of subjective rights by assigning them to judicial bodies and contains no definition of the concepts of civil and political rights, and since in addition the data furnished in this respect by the preparatory work on the Constitution are very summary, we have tried to clarify them, one added difficulty being that the Court of Cassation which has only considered the issue in certain specific cases, has never given a general expression to its position in this regard.

(a) Civil rights

46. In the last century, the doctrine of natural law completely dominated the concept of civil rights, which were regarded as inherent in the existence of the individual. Subsequently the Court of Cassation in its judgement of 5 November 1920 (Pas. 1920 I, 193) gave the only express definition of civil rights, which were viewed as "all private rights embodied in and organized by the Civil Code and the laws supplementing it", a definition which was certainly correct for rights concerning the status of individuals and private legal relations, but there was much debate about the nature of subjective rights that the individual may assert vis-à-vis the administrative authorities as far as patrimonial relations are concerned (Mast, Précis de droit administratif, 1989).

47. On the basis of this definition, the Court included public freedoms in the concept of civil rights; while frequently maintaining the confusion between the concept of subjective rights and civil rights, it gave that interpretation to any right of inheritance, even with regard to public persons, and any right stemming from a financial obligation by the administration, whatever the source - such as the right to a salary and pension payable by the Exchequer (Cass. 15 October 1934, Pas. 1935 I, 29; Cass. 28 May 1958, Pas. 1958, I, 1967). More generally, it accepted the existence of a civil right to the integrity of the individual and of his inheritance (Cass. 28 October 1925, Pas. 1926 I, 22), and any infringement thereof by the public authorities or by private persons entailed a civil right to compensation (Cass. 21 March and 11 July 1935, Pas. I, 195 and 320) (C. Goossens, Rev. Crit. de JP Belge, 1969, p. 305ff).

48. The Trine judgement of 21 December 1956 (Pas. 1957, I, 430) marked a change in the caselaw of the Court, which left less room for civil rights, and considered that the right to unemployment benefit - a patrimonial-type right relating to the operation of a public service - was a right of a political nature (in the same sense Cass. 31 October 1963, Pas. 1964 I, 233), while later classifying rights to social security services as political rights (Pass. 22 May 1969, Pass. I 1969, p. 863). Since then, the Court of Cassation has further enunciated the principle that legal disputes concerning financial compensation for infringement of a right, even in the case of a political

right (Cass. 16 December 1965, Pas. 1966 I, 513), or at a later stage, concerning compensation for a right unlawfully infringed, whether civil or political (Cass. 23 March 1984, Ch. réunies, Bull arrêts C. Cass. 1984 T. II No. 423) fall within the exclusive competence of the courts.

49. Given existing caselaw, it must therefore be admitted that jurists cannot give a consistent definition of civil rights, particularly as the Council of State has not extended the concept of civil rights exclusively within its competence. That was the reason for including article 93 in the programme for the review of the constitution ordered in November 1978 and renewed in October 1981, because "the interpretation and implementation of the principle contained in this provision have given rise to some difficulties, mainly due to the fact that the text of the Constitution contains no definition of the concepts of civil rights and political rights". (Doc. Parl. Sénat 1978-1979, No. 476: 2, annex, p. 7). However, the declaration of November 1987 no longer included article 93 among the provisions of the Constitution subject to review.

(b) Political rights

50. If it is difficult, or even impossible to define civil rights in terms of their content, the task has proved equally awkward in the case of political rights. While political rights were originally the citizen's rights to participate in the exercise of powers emanating from the Nation, together with the rights correlative to any obligation deriving from powers such as the "ius tributi" and "ius militae" (Velu, Notes du droit public, vol. I, Presses ULB, 1989-1990), the Court of Cassation has subsequently extended this concept. Prosecutor-General Ganshof van der Meersch, in his submissions preceding the Court's judgement of 22 May 1969 said that:

> "Political rights have a dual nature - their aim being the government of society and they consist of the relations deriving from that government between society itself, considered as a political corpus, and individuals, considered as members of that society.
>
> "In fact, political rights are not restricted merely to the active participation of the individual in the political community, in other words, his participation in the exercise of powers emanating from the Nation, which imply an active role in the management of the interests of the politically organized community, or, to put in another way, the power to intervene in the government of the State, such as the right to be elected member of parliamentary assemblies, or of a provincial council, a permanent deputation or a communel council, the right to be appointed to other public duties or to stand for election for public duties.
>
> "In addition to these rights of participation in the exercise of sovereignty, the law has given the individual other subjective rights, stemming from his passive participation in the political community, and they have steadily grown with the development of State activity. They are the rights of a citizen (and, in so far as the law provides, of an alien) to take part, as a member of the politically organized national community, in the distribution of the services and advantages provided by public authority. They are not rights of the exercise of power but

legally protected rights of enjoyment. The right to the use of public services, the right of admission to public employment, the right to war damages and the right to social security are particular examples of such rights.

"The concept of political rights cannot, therefore, be restricted to participation by the holder of such rights in the exercise of the right to sovereignty. Some subjective rights involve not the active participation by the individual in the exercise of powers emanating from the Nation, but the enjoyment of certain services provided by public authority.

"Such rights are those generally qualified as economic and social rights. An example is the right to sickness and disability insurance.

"However, as to rights other than civil rights, the object of such rights is not enough to determine the category in which they should be classed.

"At this point, recourse many be had to the organizational and not only the substantive criterion. Rights are 'political' and not 'civil' when the legislature refers jurisdiction over disputes concerning those rights to an administrative court and not to the ordinary courts. If the rights were civil rights, it would not be able to refer jurisdiction to an administrative court, since article 92 of the Constitution prohibits this. For the court a law that has been enacted is presumed to be in conformity with the Constitution and that presumption cannot be moved by any contrary evidence.

"In referring disputes concerning rights to an administrative court and not to the ordinary courts, the legislature decided that they were not civil rights but political rights. In order to prove this, it uses a criterion that is decisive for the judge".

51. In conclusion, in view of the impossibility of pinpointing the exact nature of civil and political rights, Mast, with whom a number of modern writers like Velu and Flamme have agreed, proposes - leaving aside an issue deemed to be of secondary importance - that it is best to resort to a theory of the organizational criterion which relies on the principle of the full competence of the legislature. In his Précis de droit administratif, Mast goes on to say that:

"... [The theory of the organizational criterion] reminds the judge that it is not his role to replace the legislature in determining the rules of competence.

"The first important thing for the courts is always to know whether they are competent and not whether they are exclusively competent. While articles 92 and 93 of the Constitution remain as they are and since there are no rights other than civil and political rights, all disputes on subjective rights are within the competence of the ordinary judge, unless a law has expressly withdrawn from the competence of that judge disputes relating to certain political rights.

"In the absence of comment in the travaux préparatoires, it is therefore only a question of applying to articles 92 and 93 of the Constitution the usual methods of interpretation whereby the legislature, in view of its complete competence, is entitled to classify subjective rights. Special attention should thus be given to laws which, since 1831, have instituted administrative courts and thereby classified the subjective rights in question as political rights. Did the legislature refer a particular right - the right to an allowance for example - to administrative courts? The judge must conclude that this right stems not from article 92 of the Constitution but from article 93. The term 'political' thus takes on a specific meaning for the area covered by the problems coming within the respective competence of the ordinary court on the one hand and that of administrative courts on the other. The classification of the right accorded by the law is the determining factor. The court cannot superimpose its own opinion of its competence on the will of the legislature. The legislature's concept may, of course, be criticized, but outside the sphere of civil and political rights the criticism cannot be based on objections of a constitutional nature".

52. After noting the application by the Administration and by the Council of State of the organizational criterion and recalling that the Court of Cassation had accepted the principle of a broad interpretation of article 93 of the Constitution, the same author says that the Act of 10 October 1967 containing the Judicial Code, despite the fact that the judiciary has taken over disputes concerning social security and insurance, corroborates the doctrine of the legislature's authority to characterize an offence:

"When the legislature refers disputes concerning a subjective right to an administrative court it must be concluded that, in its eyes, it is a political right that is involved. The fact that the law refers or simply leaves disputes concerning a subjective right to the ordinary court does not mean, however, that the right is a civil right. In fact, it is apparent from articles 92 and 93 of the Constitution that courts hand down decisions both on civil and on political rights. The subjective right to the granting of social benefits does not therefore become a civil right, (i.e. a right which, under the Constitution, comes within the exclusive competence of the courts) for the simple reason that, henceforth, courts will hand down decisions on the existence of that right. Thus, the right to unemployment benefit which the Court of Cassation has rightly classified as a political right, remains a political right despite the changes in the system of competence. Needless to say, it is not because in very numerous cases it devolves on an ordinary court to hand down a decision on disputes concerning the "ius tributi" that that right has become a civil right. At least in the sphere of relations between the person administered and the administrative authority, it is for the legislature to decide if there is a case for using the powers to which it is entitled under article 93 of the Constitution".

Corrections and further details concerning Belgium's initial report and consideration of the report by the Human Rights Committee

53. Paragraph 27 (v) on page 6 of the initial report of Belgium (CCPR/C/31/Add.3) should read as follows:

> "(v) In certain cases, however, the jobs to be filled are reserved, by law or regulation, for candidates of one particular sex. This applies to duties involving work of a kind that is forbidden to women under general measures of protection (underground work in mines, navvying, manual work in compressed air caissons, night work other than in duly authorized cases, etc.)."

54. Account should be also taken of the replies to the questions raised by the Human Rights Committee concerning article 2 of the Covenant, which can be found in the summary record of the Committee's 821st meeting (CCPR/C/SR.821, pp. 6 to 9).

55. In order to complete the details of the place of women in State machinery furnished to members of the Committee at the 821st meeting (CCPR/C/SR.821, para. 36), reference may be made to the document entitled "Aperçu des effectifs du secteur public" (Overview of employees in the public sector), published in June 1987 by the Ministry of the Interior and the Civil Service (annex 7 ter).

Article 3

56. As to article 3 of the Covenant, a number of changes are called for in regard to Belgium's initial report to the Committee. The commentary on article 3 in the report (CCPR/C/31/Add.3, paras. 28-50) should be supplemented by a reference to the Royal Decree of 2 March 1984 establishing the Advisory Commission on disputes concerning equal treatment of men and women in the public service. The Decree was implemented in compliance with article 135 of the Economic Reorientation Act of 4 August 1978 (annexes 5 and 5 bis).

57. In paragraph 29 of the initial report, the European elections should be added to the list of the various elections, and the urban area elections should be replaced by the elections to the Council of the Brussels-Capital Region.

58. The following text should be added to paragraph 30 of the report:

> A Royal Decree of 14 July 1987 (annex 6) establishing measures to foster equal opportunities for men and women in the private sector implements article 116 (1) of the Economic Reorientation Act of 4 August 1978 referred to above. Under article 1 of the Royal Decree: "Positive action, consisting of measures taken in the areas referred to in article 116 (1) of the Act of 4 August 1978 [...], is designed to rectify any de facto inequalities which affect the opportunities of women. These measures shall be carried out in the form of equal opportunity programmes which include either measures to put an end to traditional situations and social behaviour which have harmful effects on women, or measures to encourage the access of women to and participation in a professional life in all sectors and occupations and at all levels of authority".

Article 3 of the same Decree adds:

"Equal opportunity programmes may be established either within the sectors of activity or within the firm, in consultation with the workers' representatives".

Article 4 continues:

"An equal opportunity programme shall include the following:

- A description of the goals to be achieved in terms of the situation of men compared to that of women in the firm(s);

- A description of the positive action to be taken;

- The date on which the programme will take effect and the deadlines set for the achievement of the intermediate stages leading to the stated goals".

Article 5 reads as follows:

"In consultation with the workers' representatives, in particular within the framework of the consultation bodies in the firm (works council, safety, hygiene and workplace improvement committees, trade union delegation) and in accordance with the functions which have been assigned to these bodies under legal provisions or regulations, the results of the equal opportunity programme shall be evaluated periodically".

59. The Women's Employment Commission, which was set up under the Ministry of Labour, delivered an opinion, No. 51/1, on 5 December 1988 concerning the employment of women (annex 8).

Access for women to a military career

60. Paragraph 44 of the initial report should be supplemented by the following text:

(a) Regarding the status of women in the army, a number of amendments have been made in the regulations concerning the psycho-technical tests and physical fitness tests. Thus, the Ministerial Order of 27 December 1977 "establishing the psycho-technical tests and physical fitness tests to be taken by military candidates for the active list" (Moniteur belge, 20 January 1978) was substantially amended by the Ministerial Order of 3 February 1981 (Moniteur belge, 11 February 1981, p. 1513). Both Orders were subsequently repealed by the Ministerial Order of 19 December 1986 (Moniteur belge, 27 January 1987, p. 1109), which establishes identical selection criteria for both men and women. The total number of women currently in the army is 3,163, including 28 officers, 777 non-commissioned officers, and 2,258 corporals and soldiers (as at 1 September 1989).

(b) The status of women in the Gendarmerie has also been substantially altered. The Royal Decree of 9 April 1979 concerning the recruitment and training of the staff of the operational corps of the Gendarmerie was amended by the Royal Decree of 21 September 1988 (Moniteur belge, 12 October 1988) and by the Royal Decree of 1 August 1989 (Moniteur belge, 8 August 1989). There are now 53 women in the Gendarmerie (as at 9 October 1989).

(c) Two further comments should be made concerning the personnel in the Gendarmerie.

(i) The first refers to articles 7 and 11 of the Royal Decree of 14 March 1963 concerning the internal organization of the Gendarmerie, which are still being applied. These articles provide respectively that it is compulsory for the personnel of the Gendarmerie to reside in their district when they are unmarried or, in other circumstances, in a place determined in conformity with the criteria prescribed by the commanding officer of the Gendarmerie.

(ii) The second comment refers to the question of the marriage of a member of the Gendarmerie, which is subject to authorization by the head of their corps.

This rule, which is set out in the Royal Decree of 31 August 1976 (Moniteur belge, 18 September 1976) and is implemented under article 45 of the Act of 14 January 1975, is still in force for the personnel of the Gendarmerie, whereas it has been lifted for the members of the armed forces. The justification for the law states that: "The principle whereby the members of the armed forces must receive prior authorization to contract marriage has been maintained only for members of the Gendarmerie. The special missions assigned to the members of the Gendarmerie as well as the close contacts that they are required to have with the population demand that the character of the wife be beyond reproach" (cf. Pasinomie 1976 p. 43).

61. In Belgium there is no discrimination on the grounds of sex at the time of recruitment. However, exceptions are permissible in so far as they have been provided for by royal decree debated in the Council of Ministers. For example, during the period under review as regards the State institutions referred to in article 37 of the Protection of Young Persons Act of 8 April 1965, a Royal Decree of 9 November 1984 on the conditions for certain jobs in State institutions for observation and supervised education provides that the teaching and supervisory posts shall be reserved for persons of the same sex as the minors for whom they are responsible. This restriction applies only to State institutions - not to private ones - and affects only teaching posts. As for the remainder of the staff (directors, psychologists, sociologists, maintenance staff, etc.), it is compulsory for both sexes to be represented.

Parental authority

62. Belgium has adopted new laws on parental authority over the person and property of a child, guardianship and attainment of majority, (chapters VI and VII of the Act of 31 March 1987 conerning filiation (annex 32)). Although

they filled a gap, the Acts of 8 April 1965 and of 1 July 1975, which did aways with the father's exclusive authority over the child and established instead the parental authority of both the father and the mother, had none the less kept the old wording. The new Act has replaced the term "puissance paternelle" with "autorité parentale" in the heading of title IX of Book 1 of the Civil Code as well as article 487 of the Civil Code and articles 32, 33, 34 and the Protection of Young Persons Act of 8 April 1965. An innovative feature is that the Act places married couples and persons living together on exactly the same footing. Married and unmarried parents have the same rights in respect of authority over the person of the child and the administration of his property and consequently articles 396 bis, 401 bis and 409 of the Civil Code, concerning guardianship of a natural child, have been rescinded. The only remaining distinction is the one between parents living together and parents who have separated. It is a distinction that determines concurrent or exclusive exercise of parental authority, subject to the other parent's right to keep a check and to submit an appeal.

63. The following system now governs parental authority and guardianship:

(a) If double filiation is established and both the mother and father are living together they exercise concurrent authority over the person of a minor, as well as the right to administer his property and to represent him in all civil acts (Civil Code, new articles 373 and 376).

(b) If double filiation is established and the mother and father are not living together, the parent who has material custody of the child, in other words, the one with whom the child lives (and not the one he visits), has the sole right to exercise authority over the person of the child, to administer his property and represent him (Civil Code, new articles 374 and 377). Whether the parents live together or not, such authority shall, subject to the exceptions prescribed by law and to the other parent's right to appeal to a juvenile court, be exercised in the interest of the child, without prejudice to any acts already completed in regard to the administration of property. If filiation is not established in respect of either the mother or the father or if one of them has died, is absent or is incapable of expressing his wishes, the law maintains the previous distinction, between the exercise of authority over the person of the child, and the administration of his property: the other parent alone will exercise the authority over the person of the child (Civil Code, new art. 375), and it is as a guardian that he will exercise authority over the property of the child, under new articles 390 and 395 of the Civil Code.

64. The right of mothers and fathers to statutory usufruct (Civil Code, arts. 384-386) has ceased to be the privilege of married parents only. Article 384 confers on both the mother and the father, married or not, the right of statutory usufruct of the property of their children, up to the age of 18 or emancipation. The same distinction exists, depending on whether the parents live together or not. The new article 385 of the Civil Code provides that "If the mother and father do not live together, usufruct shall be the right of the parent who has material custody of the child, unless otherwise decided by a court of first instance or a judge who entrusts the child to the custody of one of his parents". The removal of the discrimination based on marriage implies that the sanction imposed on divorce or separation has been

removed and they no longer terminate the right to statutory usufruct, nor does the absence of an inventory of the property by the survivor, as had been provided in former article 386 of the Civil Code. Article 393 of the Civil Code abolishes the outdated institutions of administrator to an unborn child and of the special council to the mother who is guardian stipulated in article 1181 of the Judicial Code, which has also been amended by the new Act.

Article 4

65. Article 4 (paras. 51 to 65 of the initial report) does not require any special comment because there have been no changes in the provisions of Belgium's positive law concerning the two situations derogating from the system of the fundamental rights of the individual, namely, time of war and state of siege.

Article 5

66. No additional information is necessary.

Article 6

67. In the initial report it was said that book II, title VIII, chapter 1, of the Penal Code establishes severe penalties for any form of homicide. The death penalty continues to be stipulated in the Belgian Penal Code (arts. 8-11). It is still handed down by courts but, in fact, no one sentenced to death for an offence under ordinary law has been executed since 1918. Belgium should be included among the States whose practice tends towards abolition of the death penalty (CCPR/C/31/Add.3, para. 69). Against this background also, mention should be made of the fact that Belgium intends to abolish the death penalty shortly. The subject is being widely discussed and the Minister of Justice has also decided to submit a bill to that effect.

68. As indicated in the initial report, Belgian legislation appears to contradict, in theory, one of the principles set out in article 6, paragraph 5, of the Covenant. Pursuant to article 38 of the Protection of Young Persons Act, a minor under 16 at the time he commits an offence may be referred to the assize court and be liable to the death penalty. However, this contradiction is purely theoretical, because the death penalty is no longer enforced in Belgium. Consequently, no thought has ever been given to supplementing article 38 of the Act of 8 April 1965, and it remains under the jurisdiction of the national authority by virtue of the Act of 8 August 1988 amending the Special Act of 8 August 1980 on Institutional Reforms. The application of the death penalty to minors over 16 and under 18 is therefore ruled out because the juveniles' court would have declared itself incompetent and referred the matter to the competent court for adults.

69. Belgium has answered the questionnaire on the fourth United Nations five year report on the death penalty (annex 9).

70. Belgium is arranging to sign the Second Optional Protocol to the International Covenant on Civil and Political Rights to abolish the death penalty.

Article 7

Information concerning prison establishments

71. To supplement the initial report, mention should be made of the changes that have occurred in the prison system, especially the one regarding consignment to a punishment cell. This measure, which may be used as a disciplinary penalty, is strictly regulated in order to prevent abuse (CCPR/C/31/Add.3, para. 90).

72. For the purpose of bringing the requirements of the general regulations consignment to a punishment cell to the rules of medical ethics and to current ideas on penology, articles 83 to 87 and 109 of the regulations have been amended by the Royal Decree of 7 February 1986, formerly the Royal Decree of 21 May 1965, concerning the general regulations for prison establishments.

73. The new directives governing consignment to a punishment cell are as follows:

(a) Under the rules of medical ethics, a physician may not be party to a disciplinary measure. Consequently, the physician shall no longer play any part in the decision regarding consignment, and his role must be restricted to providing medical care for the person who has been punished.

(b) The purpose of consignment to a punishment cell is not to inflict physical suffering. The punishment itself consists solely of social isolation within the prison. The decision to impose this punishment, implies that the prisoner will be forbidden any direct contact with the other prisoners and the outside world (no community activities, no visits), subject to the reservation that the prisoner has the right to be visited by his counsel. Lastly, a prisoner who has been consigned to a punishment cell is not automatically excluded from activities carried out on an individual basis (canteen, correspondence, reading).

(c) Temporary consignment to a punishment cell is only a provisional measure for the purpose of maintaining order and security.

74. The approach to screening prisoners' correspondence has also changed since 1984. The screening of prisoners' correspondence is a serious violation of their private lives, and hence it may be done only in the interest of the prison, the sole purpose being to maintain order and security. In that regard, outgoing correspondence represents very little danger, because prisoners have other uncensored means of making contact with the outside world. For that reason letters for dispatch can now be handed in in a sealed envelope, provided, however, that their names are written on the back of the envelope. For order and security, however, the power to screen correspondence is still maintained in individual cases.

Information concerning the Organ Removal and Transplant Act of 13 June 1986

75. To begin with, the Act (see annexes 10, 10 *bis* and 10 *bis* (a) to 10 *bis* (h)), tries to describe the exact conditions under which a transplant may be performed. It further seeks to make the public aware of needs and of

opportunities to assist the persons concerned. The main aim of the law is to find a justifiable balance between important objectives: on the one hand, to safeguard respect for the rights of the person, for his body before and after death, through specific legislation, and on the other hand, to ensure that care can be given as efficiently as possible.

(a) Scope of the Act

76. The Act applies not to grafts from one part of the body to another: it relates exclusively to cases where the donor and the receiver are two different people. Within the meaning of the Act, the terms organs and tissue signify any substance of human origin, with the exception of secretions and blood. The term "transplant" should also be interpreted in its broadest sense, in other words transfer, implant or graft as well as any other term that is used. The Act covers only removals and transplants for therapeutic purposes.

77. The Crown has the authority to extend the scope of the Act and allow organs and tissue to be removed for the preparation of therapeutic substances. The Crown may, on the advice of a Higher Health Council, extend the application of the measures on the removal of organs or tissue after the person has died, so was to assist in the treatment of similar cases.

78. If scientific developments in the future lead to alternative treatments for serious illnesses or deficiencies, the scope of the Act could be extended. However, if equally effective chemical substances of non-human origin were discovered, there would no longer be any reason to provide for the removal of certain organs on a widespread basis, in which case the scope could be reduced. The purpose of affording this opportunity to amend the scope of the Act is to promote the development of suitable treatments and thus relieve suffering.

79. Since the treatment is surgical, transplants and removals can only be done in hospitals. As a matter of fact, transplants are mainly performed in university hospitals, which are already required to meet strict conditions in order to be approved. The hospital departments which perform transplant operations may, where necessary, be subject to specific regulations under the law governing hospitals.

80. The absence of any profit motive is a principle in keeping with a concept of law which considers that there can be no commerce in the human body. Sickness insurance schemes contribute to the costs of care to the donor, when the donor is covered by a social security scheme. The Crown may take additional measures in cases in which the system proves inadequate.

(b) Removal from living donors

81. Articles 5 to 9 set out the various requirements for the removal of organs and tissue from living donors.

82. Article 5 lays down the minimum conditions for any removal from human donors, conditions that relate to the age and the consent of the donor. The organ or tissue may be removed only from a person who has reached the age

of 18. The donor, from the age of 18, should also have consented to the removal. It is thought that a person is able to give consent to removal knowingly from the age of 18. This rule can be applied immediately and in conformity with Belgian private international law and it excludes the application of any foreign legislation. Both Belgian nationals and foreigners are allowed to consent to the removal of organs and tissue from the age of 18.

83. Article 6 stipulates that an organ or tissue may be taken from living persons only exceptionally if the organ or tissue is non-regenerative or if the removal is likely to have serious consequences for the donor. Such a course is authorized only when the life of the recipient is in danger and when he cannot be helped in such a satisfactory manner by a transplant of an organ or tissue taken from a dead person. If the donor is married, the consent of the spouse living with him or her is required. If the donor is an alien, his personal status shall determine which person is to give his consent. If he is not of full age, i.e. has not reached 21 years of age, the person(s) required to give consent to the marriage of a minor must first give consent to removal of the organ or tissue.

84. Article 7 applies to cases of tissue or organs taken for the purposes of transplants on a brother or sister. In this instance, it is not possible to rule out the possibility of the tissue or the organ being taken from a donor under 18 years of age. Additional guarantees are none the less required:

(a) The donor must himself consent if he has reached the age of 15;

(b) The person(s) who, under the terms of the Civil Code, are required to consent to the marriage of a minor are required to give their consent, whatever the nature of the operation;

(c) The approval of three physicians is required for the removal of tissue or organs not likely to regenerate or an operation likely to have serious consequences for the donor.

85. Article 8, paragraph 1, sets out the principle that consent to removal of the organ or tissue must be freely and knowingly given. Naturally, a person who has been declared incompetent by a court decision or whose minority has been extended cannot give consent. However, incompetence is not confined to this category of persons. Capacity to give free and knowing consent is a question of fact. Paragraph 2 sets out the terms and conditions for granting or withdrawing consent. To avoid any uncertainty or any abuse, it must be given or withdrawn in writing in front of an adult witness. For practical reasons, paragraph 3 stipulates that the person who invokes withdrawal must supply proof.

86. Article 9 lays down the obligations of the physician who intends to remove the organ or tissue. He is required:

(a) To make sure that the conditions set out in articles 5 to 8 are met;

(b) To inform the donor and the persons whose consent is required;

(c) To verify that the donor has taken his decision judiciously and for an unquestionably altruistic purpose. The physician snall infer from the donor's reactions whether the donor has taken his decision judiciously. However, the physician cannot be expected to embark on an inquiry to determine whether the donor is acting for an altruistic purpose. If, in the light of the donor's statements, the physician realizes that this is not the case, he is forbidden to proceed with removal of the tissue or organ.

(c) Removal of tissue or organ after death

87. Article 10 is based on the principle that persons wish to contribute to the donation of organs after death, in a spirit of human solidarity. However, the organ may not be removed if it is established that the person who has died was opposed to such a course in his lifetime and that the close relatives have expressed their opposition. This principle is confined to any Belgian domiciled in Belgium. In the case of aliens on Belgian territory, they must have formally expressed their consent. Religious or legal objections have also been encountered. Capacity to consent is a personal factor that is governed by national law in accordance with the rules of private international law.

88. For persons who are not in a position to express their will as a result of their mental condition, opposition has to be expressed by their legal representative or provisional administrator, if any, or by the closest relative. No minimum age is required in the case of opposition expressed by a person who has since died; it is enough for such opposition to have been clearly expressed.

89. The Act defines the physician's obligations. After verifying that no opposition has been expressed in accordance with the terms and conditions established by the Crown, the physician may remove the tissue or organ without further prior examinations. However, he may not do so if he has been informed of any opposition; in the event of any objection, it lies with the person making the objection to prove that the physician was aware of the opposition. The right to express opposition is none the less confined to persons living with the donor. Generally speaking, the persons involved are persons who are in hospital, and any objection by close relatives can normally be made before the patient dies.

90. Article 11: Since tissue and organs must be removed promptly after death, there are proper guarantees that death has actually occurred:

(a) The death is verified on the basis of the most recent scientific developments, and since methods keep pace with scientific advances, the authorities do not lay down specific criteria. The method is not the experimental "latest innovation" but one generally accepted for verification of death;

(b) A report containing all the data is made out and is kept; if necessary, the Crown may require a more detailed description of the method used to discharge this obligation.

91. The provisions of article 12 are concerned with members of the family and reflect the necessary respect everyone is required to display towards the mortal remains.

92. Article 13: In the event of violent death from suspicious causes, a report must be made out with all the data that might possibly be needed if the Crown Prosecutor subsequently orders an information to be laid before a magistrate or demand an autopsy. Paragraph 2 concerns the removal of tissue or organs in the event of death from unknown or suspicious causes. There is a system of monitoring by the Crown Prosecutor - no tissue or organ may be removed unless he has first been informed or if he raises an objection. He may send a physician to investigate.

93. Article 14: To avoid the possibility of any claims that rights and obligations emerge, as between the recipient and the members of the donor's family, the identify of the donor and the recipient must remain confidential. Such protection is especially necessary when the donor is alive. However, it is not always indispensable. An organ is in most instances transferred to a person with whom there are emotional ties and whose need is known.

(d) Final provisions

94. Under article 15 the Crown is competent to determine the terms and conditions for expressing consent, approval and opposition, as referred to in the articles concerned.

95. Monitoring of the application of the law is assigned under the terms of article 16 to medical officers. Under the Royal Decree concerning the designation of medical officers to monitor application of the law concerning organ transplants and decrees issued to implement it, this task is assigned to the Secretaries of the Provincial Medical Commissions.

96. Article 17 sets out appropriate penalties for the various breaches of the provisions of the law.

97. Article 18 concerns repetition, within five years, of one of the offences punishable by law. In such instances, the court may double the penalty.

Information from the Department of National Defence

98. With reference more particularly to paragraphs 95 to 98 of the initial report (CCPR/C/31/Add.3), on the disciplinary and criminal law governing Belgian military personnel, there is no change in legislation or regulations to report. Article 1 of the Act of 27 May 1870, on military penalties, still applies, as does article 22 of the Act of 14 January 1975, containing the Armed Forces Disciplinary Regulations.

Additional information

99. Reference should be made here to the replies to the questions raised by members of the Human Rights Committee during its consideration of Belgium's initial report (CCPR/C/SR.821, paras. 42-52).

100. Violence against persons is covered by book II, title VII, of the Penal Code: murder and assault and battery, involuntary homicide and assault and battery, violation of the freedom of the individual.

101. Rape and indecent assault are punishable under book II, title VII, of the Penal Code, as are incitement to depravity and procuring. The legal provisions on rape have recently been changed: a law was enacted on 4 July 1989 (annex 11) and the concept of "rape", which is now broader, has been defined more clearly and harsher penalties apply.

102. In addition to legal provisions, a considerable effort has been made in regard to improve training for police departments dealing with sexual offences. A "Sexual Aggression Kit" has also been developed and will be made available to police departments to enable physicians to verify the facts, to conduct a more thorough examination and produce more accurate findings.

Article 8

103. It should be noted that the age for compulsory school attendance has now been raised to 18 (see CCPR/C/31/Add.3, para. 143).

104. Belgium's initial report mentions the Royal Decree of 22 November 1974 defining the general conditions for the approval of private individuals and private institutions willing to provide care for minors placed by a committee for the protection of young persons, the special assistance bureau of a Flemish committee for young persons or a juvenile court (CCPR/C/31/Add.3, para. 142). It should be pointed out that, under the Special Act on institutional reforms dated 8 August 1980, competence in regard to protection of young people was partly transferred from the national to the community authorities and hence the Royal Decree of 22 November 1974 now applies only to the Flemish- and German-speaking Communities.

105. For the French Community the matters covered by the Royal Decree come under a French Community Executive Order dated 7 December 1987 (annex 12), on the approval and award of subsidies to persons and services providing training for the protection of young people. The new Order, based on an Order of 14 May 1987 (annex 13) on the approval and award of subsidies to persons and services providing training for the protection of young people, reproduces a similar provision to the one set out in item 44 of the annex to the above-mentioned Order of 22 November 1974, namely article 8 (6), reading: "Recipients may engage in maintenance work useful for their training or education only if their physical condition and performance at school and at work so allow". However, the Order does not reproduce provisions similar to items 53 to 56 of the same annex, also mentioned above. The reason is that, unlike the Royal Decree of 22 November 1974, which referred to various categories of establishments, including young workers' schools, it simply refers to the curriculum the establishment must attach to its request for approval. This Decree and the one that serves as the legal basis, will doubtless be reviewed when the bill on assistance to young people is voted.

106. Similarly, in the Flemish Community the Royal Decree of 22 November 1974 will in the long run be replaced by a Flemish Executive order adopted under the Order of 27 June 1985, as supplemented by the bill.

107. In cases where minors are placed in State institutions for observation and supervised education, the regulations applicable to these institutions provide that, without the authorization of the Minister of Justice, members of the staff are not allowed to employ minors in their own service or for work on their behalf or to hire minors whose placement has ended (art. 21, paras. 8-9). Article 81 of the regulations also prohibits penalties in the form of hard or arduous labour or work not normally done by minors. Any person who fails to comply with these regulations is liable to disciplinary measures decided by the head of staff. In view of the fact that protection of young persons is assigned to the Communities, these regulations will have to be reviewed by each one. For the French Community, the preliminary draft of the decree for assistance to young people provides that the Executive will establish the general regulations for open- and closed-system public institutions for the protection of young persons in the French Community. These general regulations will be drafted in the light of the guarantees for observance of the rights of young people as set out in the preliminary draft of the decree itself, more particularly in regard to young people assigned to public institutions.

Article 9

108. Article 9 (see initial report, paras. 154-169) is concerned with the lawfulness of arrest and detention. Paragraph 154 (c) mentions, among other types of deprivation of liberty, the placing under supervision in their military unit of military personnel guilty of one or more serious offences against discipline (art. 41 of the Act of 14 January 1975, mentioned above). The article is still in force, for the planned draft of article 41 bis has since been abandoned. Attention is drawn in this regard to the explanations given to members of the Human Rights Committee by Belgium's representative at the 821st meeting (CCPR/C/SR.821, paras. 53-59) (annex 14).

Lawfulness of arrest and detention

109. Under article 7 of the Constitution "the freedom of the individual is guaranteed. No one may be prosecuted except in cases specified by law and in accordance with the duly prescribed procedures".

(a) Arrest. Except in the case of an offender apprehended in flagrante delicto, no one may be arrested without a warrant issued by an examining magistrate, stating the reasons for the arrest.

(b) Detention. Pre-trial detention is the subject of an Act of 20 April 1874, which defines the conditions in which such detention is allowed (arts. 1-2).

(c) Other types of deprivation of liberty. Other types of deprivation of liberty are governed by law. They include internment (art. 95, para. 2, of the Communes Act of 30 March 1836 and art. 7 of the Act of 18 June 1850 relating to the mentally ill; art. 43 of the Protection of Young Persons Act of 8 April 1965); administrative detention or "custody"; placing under supervision, in the case of military personnel (arts. 41 et seq. of the Act of 14 January 1975 containing the Armed Forces Disciplinary Regulations); placing

at the disposal of the authorities in the case of aliens in Belgian territory (Act of 15 December 1980 on entry of aliens into Belgium, temporary and permanent residence and removal) (see below); detention of a minor over 16 years of age, placed at the disposal of the authorities, as decided by the Minister of Justice, pursuant to article 41 of the Protection of Young Persons Act of 8 April 1965, and custody of a juvenile in a local prison for 15 days, ordered by the juvenile court, pursuant to article 53 of the same Act. It was pointed out above, however, that the competence of the Minister of Justice, as established in article 41, has been transferred to the ministers of the Communities, one of whose tasks is to protect young persons, and they have decided not to hold minors in detention under that article. As to article 53, it has also been pointed out that it had been applied less and less in judicial practice, since the finding against Belgium at Strasbourg.

Information to be given to persons under arrest

110. It should be added in connection with the point regarding charges that, further to an advisory opinion of 13 March 1989 ("Lamy case") of the European Court of Human Rights, it was deemed necessary and urgent to solve the problem of the case-file not being available to the accused in the five days following questioning by the examining magistrate. For this purpose, irrespective of the bill on pre-trial detention, which is intended to provide an overall answer to the question of deprivation of liberty before the hearing, another bill has been prepared and it specifically envisages a review of articles 3 and 4 of the Pre-trial Detention Act of 20 April 1874. For example, the new provisions will in any event authorize free communication between the accused and his counsel on the last working day before the hearing in the arraignment chamber in cases where the accused is held incommunicado (art. 3) and will provide that the items of evidence may be communicated to the accused and his counsel in connection with the first hearing before the arraignment chamber, within five days of the issue of the detention warrant (art. 4). In this instance, however, the examining magistrate would have an opportunity - admittedly limited - to refuse to communicate certain items of evidence in cases where, when the examination proceedings are simply beginning, measures in the examination need to be carried out with the utmost discretion if they are not to become totally futile. In such cases, the examining magistrate will be required to indicate the number and nature of the items he refuses to communicate, without revealing details of the content. This bill, which Parliament is expected to adopt shortly, is part, as mentioned above, of the broad-ranging bill on pre-trial detention. The basic aim is to secure a greater guarantee of respect for the freedom of the individual (more particularly in regard to arrest and custody in pre-trial detention, and also to ensure better administration of justice).

Right to compensation

111. Article 9, paragraph 5, of the Covenant provides that anyone who has been the victim of unlawful arrest or detention shall have the right to compensation. This principle also figures in the European Convention for the Protection of Human Rights and Fundamental Freedoms, in which article 5, paragraph 5, states that everyone who has been a victim of arrest or detention in contravention of the provisions of article 5 has a right to compensation.

112. It is worth recalling that Belgian law provides for the right to compensation in two instances:

(a) Deprivation of liberty in breach of the European Convention

Belgium, prompted by respect for the European Convention, established under the Act of 13 March 1973 amending and supplementing the Pre-trial Detention Act of 20 April 1874 (art. 27) a right to compensation by order of the ordinary courts for anyone who has been deprived of his liberty in breach of the Convention. Detention is, in this case, regarded as the result of a fault of the State and the victim may institute proceedings in the ordinary courts against the Belgian State in the person of the Minister of Justice.

(b) "Inoperative" arrest and detention

The Belgian legislature has taken the view that, under certain conditions, compensation should be allowed for material and moral harm sustained by the victim of "inoperative" pre-trial detention. In applying these principles, the Act of 13 March 1973 goes further than the requirements of the European Convention and the Covenant. For example, article 28 of the Pre-trial Detention Act, inserted under the Act of 13 March 1973, has extended the right to compensation to indemnization for anyone who has been placed under pre-trial detention and who is able, in certain circumstances and under certain conditions, to claim compensation. The Act covers cases of persons detained lawfully in pre-trial proceedings for acts which, among other things, have not been declared proven by courts or which cannot be definitely attributed to the accused, who is entitled to the benefit of the doubt. Pre-trial detention is not, in this instance, the result of a fault of the State. The circumstances alone can lead to a finding that the arrest or detention is "inoperative", even though the examining magistrate or the courts are not at fault.

113. The conditions for compensation are governed by article 28, paragraph 2, of the Act of 20 April 1874. Specifically:

(a) The person must have been held in pre-trial custody for more than eight days;

(b) The arrest or detention must not have been provoked by the person's own conduct;

(c) The person must have been exonerated directly or indirectly by an enforceable judicial decision;

or if, after benefiting from an order dismissing the proceedings, the person submits factual evidence or legal arguments proving his innocence;

or if the person has been arrested or held in custody following extinction of the prosecution by prescription;

or, finally, if an order dismissing the proceedings expressly states that the act which gave rise to the custody does not constitute an offence.

114. The compensation procedure requires the person concerned to file an application with the Minister of Justice, which must give a ruling within six months. If the Minister of Justice refuses to grant compensation, or if the compensation is deemed insufficient by the victim, or should no decision be taken within the six months, the applicant can lodge an appeal with a special board. This board is composed of three members: the First President of the Court of Cassation; the First President of the Council of State; and the senior member of the National Bar Association. The parties (applicant and representative of the Minister of Justice) are heard together with the Prosecutor-General of the Court of Cassation. The decisions of the special board are not open to appeal. About 60 case files a year (French-language and Flemish-language) are submitted to the Minister of Justice. Compensation is granted in about two-thirds of the cases and appeals are lodged in 25 per cent of them. The total amounts paid range, each year, between 300,000 and 5 million Belgian francs.

Measures applicable to aliens:

Article 9, paragraph 1, of the Covenant

115. With the addition of two new articles (50 bis and 63/5) to the Act of 15 December, 1980, paragraph 165 of Belgium's initial report (CCPR/C/31/Add.3) should be amended to read:

> "Without prejudice to the implementation of articles 75 and 76 of the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens (see annex 17), which determine the prison sentences applicable to aliens who illegally enter or stay in the Kingdom, any alien on Belgian territory may be placed at the disposal of the authorities in the cases and for the reasons referred to in articles 7, 25, 27, 53 bis, 54, 63/5 and 67 of the above-mentioned Act. Such preventive detention is ordered either with a view to the execution of an expulsion order (arts. 7, 25, 27 and 53 bis) or pending a decision concerning the alien (arts. 54, 63/5 and 67), when exceptionally serious circumstances so warrant."

The new articles 53 bis and 63/5 were inserted in pursuance of articles 8 and 14 of the Act of 14 July 1987 amending, with reference in particular to refugees, the Act of 15 December 1980.

Article 9, paragraph 4, of the Covenant

116. In accordance with articles 71 and 74 of the Act of 15 December 1980, an alien placed at the disposal of the authorities may lodge an appeal against his detention with the courts. Articles 71 to 74 define the applicable rules and procedures. Since article 71 of the Organization Act was not reviewed at the time the above-mentioned Act of 14 July 1987 was passed, articles 53 bis and 63/5 are not included in the enumeration of articles against whose application an appeal may be lodged with the courts. In this regard it is intended to bring in a bill amending article 71 of the Organization Act. In the meantime, this gap in the legislation (the absence of any provision for appeal against measures depriving a person of liberty

that may be taken under articles 53 bis and 63/5 of the Act of 15 December 1980) is covered by article 5, paragraph 4, of the Convention for the Protection of Human Rights and Fundamental Freedoms (also called the European Convention on Human Rights), which provides that anyone who is deprived of his liberty by arrest or detention shall be entitled to appeal to a court in order for the lawfulness of his detention to be decided speedily.

Article 10

117. With regard to prisons, it should be noted that a circular dated 16 October 1985 extends to all categories of prisoner an opportunity previously reserved, under article 96, paragraph 2, of the General Regulations for unconvicted prisoners and accused persons, of having a physician of their choice called in, at their own expense. In fact, the circular regularized an already widespread practice.

118. With regard to accused juveniles, articles 52 and 53 of the Protection of Young Persons Act of 8 April 1965 provide that, during proceedings dealing with measures to be taken to protect or assist them, minors may be temporarily held in gaol for a period not exceeding 15 days. Article 53 is shortly to be deleted in view of judgment B against Belgium at Strasbourg. Its application is already restricted, though it has not entirely ceased. Minors placed in temporary custody by the juvenile court are always kept apart from other prisoners. Visits, correspondence and the conditions of detention of the minors concerned are decided in agreement with the relevant juvenile court.

119. As to personalized treatment of convicted persons committed to prison, it was explained in connection with the interpretative declaration formulated by the Belgian Government that young convicted offenders covered by the ordinary law are not separated from adults. However, in view of the purposes of a prison sentence, as currently conceived, it is appropriate to seek, in view of their youth, such treatment as seems to be the most suitable to each individual case (e.g., continuation of studies, vocational training, and so on).

120. It should be noted that, in application of a decision by the Ministers for the Flemish Community and the French Community, whose responsibilities include the protection of young persons, there is no longer any minor, placed at the disposal of the authorities (i.e. of the competent Community Executive), who is in prison.

Measures concerning minors

121. With regard to placement with private individuals, as stated in the initial report (CCPR/3/31/Add.3, para. 192), article 66 of the Act of 8 April 1965 stipulates that: "Any natural or artificial person, any institution or any establishment offering to take in minors, on a collective and regular basis, under the said Act must be approved for the purpose by the Minister of Justice. The conditions governing such approval, which are the subject of a Royal Decree of 22 November 1974, provide guarantees inter alia as to moral and educational standards and the number of staff, as well as cleanliness and the minimum space available in the premises. A number of

guarantees are likewise provided as regards the educational system. Among these guarantees, mention may be made of item 46 of the annex of the above-mentioned Royal Decree, which stipulates that 'punishments must be adapted to the personality of the minor. Above all, they must contribute to his education and may on no account cause trauma. Any form of physical chastisement or the withholding of meals is forbidden'". In the French Community, pursuant to the reform of 1980, article 66 of the Act of 8 April 1965 has already been abrogated by the Decree of 14 May 1987 on the approval and award of subsidies to persons and institutions providing training and supervisory services for the protection of young persons (annex 13). This Decree reproduces, however, in substance the content of article 66 of the Act of 8 April 1965, stipulating as it does in article 1 that: "Any natural or artificial person or any institution providing training and supervisory services, in pursuance of article 31, paragraph 2, article 34, paragraph 1, and article 37, paragraph 2 (2°) and (3°), of the Protection of Young Persons Act of 8 April 1965 must be approved for that purpose".

122. The Executive Order of 7 December 1987 (annex 12), which is the Order putting into effect the Decree of 14 May 1987 and replaces, for the French Community, the Royal Decree of 22 November 1974, contains the same guarantees as the latter but expands those on the educational regime. Thus, article 8 (2°) of the order states that: "Punishments must always be adapted to the personality of the individual and contribute to his education. They must not be degrading or humiliating and must on no account cause trauma. Any form of physical chastisement or the withholding of meals is forbidden". The wording is thus similar to that of item 46 of the annex to the Royal Decree of 22 November 1974.

123. It may be noted that, in the Flemish Community, article 56 of the Act of 8 April 1965 has also been abrogated by the Decree of 27 June 1985 (annex 3) concerning special assistance to young persons. Article 23, paragraph 1, of that Decree provides that: "Any natural or artificial person intending to take in or assist minors on a regular basis under this Decree must be approved for that purpose by the Executive.". As has already been mentioned, the Flemish Community has not yet issued an Order giving effect to above-mentioned article 23, paragraph 1, so that the Royal Decree of 22 November 1974 remains in force for that Community. It should be noted that failure to comply with the conditions for approval may lead to a warning being given to those responsible and, where appropriate, to cancellation of the approval and subsequent removal of minors who have been placed in the establishment. The same possibility is provided for in article 4 of the French Community Decree of 14 May 1987 (annex 13), concerning the approval of and award of subsidies to persons and institutions providing educational and supervisory services for the protection of young persons and in article 25 of the Flemish Community Decree of 27 June 1985 concerning special assistance to young persons.

124. Minors detained by virtue of an order that they be held at the disposal of the authorities (see art. 41 of the Act of 8 April 1965) are regularly visited by an inspector from the Office for the Protection of Young Persons, who provides them with the necessary psychological and educational support. The Protection of Young Persons Act of 8 April 1965 stipulates that a special regime must be applied to minors in detention, that is a more flexible one

than that for adults (see art. 41), and that they must be separated from adults if they are held in gaol under article 53. As already pointed out, since the beginning of 1989 no minors have been held in prison under article 41; as for article 53, it is increasingly seldom applied on account of judgement B. For all other matters, reference should be made to the Royal Decree of 21 May 1965, which contains the general regulations for prison establishments and is cited elsewhere.

125. Any restriction on the freedom of minors, therefore, is possible only under the terms of the Act of 8 April 1965. This applies to placement, which can only be done at the behest of the Committee for the Protection of Young Persons (the special assistance bureau of a Flemish committee concerned with the welfare of young persons), in agreement with the parents or persons having custody of the minor, or by a court decision.

126. All placements made under the Act of 8 April 1965 by the Committees for the Protection of Young Persons, by the juvenile courts or, in exceptional cases (if the minor is held at the disposal of the Executive), by the appropriate Community minister, whose functions include the protection of young persons - or, under the Flemish Community Decree of 27 June 1985 on special assistance to young persons, by the special assistance bureaux of the welfare committees - are under the supervision both of the placement authorities (art. 74 of the Act of 8 April 1965) and of the administration (that is, of inspectors from the Office for the Protection of Young Persons - see article 69 of the same Act).

127. As regards State institutions, the system includes two closed sections. One of them, for Flemish-speaking minors, is part of the Mol institution. The other, for French-speaking minors, is a self-contained institution, which used to include an annex to Nivelles prison.

128. A decision of the Mons Court of Appeal of 23 November 1982 held that the placing by a juvenile court of a minor in the system of State institutions for observation and supervised education, with the stipulation that the minor should be placed in the annex of the French-speaking closed establishment at Nivelles prison, was lawful detention for the purposes of article 5 (d) of the Convention on the Protection of Human Rights and hence, that article 5 had not been infringed. Actually, in recent years there have been no further placements of minors in the Nivelles prison annex, since it has been taken over for adults by the prison administration because of the overcrowding of the gaols.

129. With a view to appreciably reducing placements of minors in local gaols under article 53 of the Act of 8 April 1965, the Minister of Justice decided to set up, starting in March 1986, reception centres for short stays, limited to 15 days, in the State institutions for observation and supervised education. The conditions for referral to these centres were laid down in ministerial circulars dated 6 March 1986 and 29 June 1987.

130. Account must be taken of the fact that the State system of institutions for observation and supervised education is no longer homogeneous owing to the establishment of the Communities. In the French Community an Executive Order issued on 18 July 1989 (annex 15), and anticipating the adoption of the draft

Decree concerning assistance to young persons, now governs the organization of the Community's system of institutions for observation and supervised education, with an eye to ensuring greater respect for the basic rights of minors. In addition to enumerating the institutions belonging to this system in the French-speaking part of the country, the Order empowers the Community minister whose responsibilities include protection of young persons to organize institutions in keeping with the needs arising from the application of the Act of 8 April 1965, to regulate the functioning of the various sections and to determine the conditions for referral. In stating the principle that institutions in the system may have premises where minors can be temporarily isolated, for their own safety and that of the staff and visitors, the order strictly regulates the utilization of such premises, which was not hitherto the case, though such premises have always existed in the State institutions.

131. Article 3 stipulates:

> "The minister whose responsibilities include protection of young persons shall determine the conditions for utilization of such premises and the standards that they must meet. Those standards and conditions must have regard for the rights of minors and the teaching functions devolving upon the system of institutions for observation and supervised education of the French Community.
>
> "They impose, in particular, upon the administrative authorities of the institution the obligation:
>
> 1. To notify the placement authority without delay;
>
> 2. To invite the placement authority to visit the minor as soon as possible, or to request urgently that a representative of the authority attend a meeting at which the young person will be present;
>
> 3. To inform the minor that he is entitled to notify a lawyer immediately by any means made available to him by the institution.
>
> "When the crisis situation ceases to exist, the isolation shall be terminated.
>
> "The isolation shall not last more than 24 hours. For any extension beyond that maximum, prior authorization must be obtained from the competent minister's representative, who shall promptly notify the appropriate court, so that the latter can take the appropriate measures with due regard for the rights of the individual concerned.
>
> "The administration is responsible, through the inspection service, for supervising the execution of the measure and for ensuring compliance with the prescribed standards and procedures."

132. Article 2 of the same Order stipulates that only the competent judicial authorities can call for placement in a closed section of an institution for observation and supervised education, which automatically precludes the minister whose functions include protection of young persons from assigning to

a closed section a minor who has been placed at the disposal of the authorities under article 39 of the Act of 8 April 1965. A fortiori, the possibility of placing a minor in a closed section simply by administrative decision is ruled out. This article also officializes the existence of the reception sections set up by the Minister of Justice to reduce the number of placements of minors in local gaols.

133. Lastly, the Order abrogates the clause in the Royal Decree of 21 December 1984 instituting the State corrective educational centre, which placed at that closed centre's disposal an annex of Nivelles prison (as already pointed out, it was no longer used in practice) in the interests of the protection of young persons.

134. As noted above, the placement of a minor can also be decided by the Community minister whose functions include protection of young persons (formerly the Minister of Justice) if the minor is held at the disposal of the Executive (formerly the national authorities) as provided for in article 39 of the Act of 8 April 1965. Such placement may be with a private person, in a private institution or in a public institution (art. 41 of the same Act).

135. It should none the less be noted that the juvenile court orders the measure provided for in article 39 only in exceptional cases, that is, if the measures it has taken pursuant to article 37 prove to be ineffective (art. 39 and the circular of 29 August 1966 concerning judicial protection), and again, that article 41 stipulates that the Minister of Justice can order the minor to be detained if the minor is over 16 years of age. The fact that the law enabled the Minister of Justice to do this was the main and almost sole reason for which the juvenile courts ordered - albeit relatively seldom - the measure provided for in article 39, since the Act of 8 April 1965 did not empower the juvenile court itself to have a minor detained except in the cases specified in article 53 and for a maximum of 15 days. Now that the ministers for the French and Flemish Communities have said that they do not want to order detention of minors who are placed at the disposal of the Executive, and a French Community Executive Order forbids placing such a minor in a closed system, there is every reason to believe that the measure provided for in article 39 will no longer be applied in the future and that the article will fall into abeyance. In any case, as already mentioned all the planned reforms, at both national and Community level, envisage the abrogation of this provision.

136. It has been said that article 53 is not consistent with the European Convention on Human Rights. In this connection, reference may be made to the above-mentioned decisions and also to a decision of the Court of Cassation of 18 November 1982 rejecting an application for review of an appeal decision by the Liège Court of First Instance of 10 September 1981 which held that a detention order issued pursuant to article 53 was lawful detention within the meaning of article 5, paragraph 1 (d) of the Convention.

137. The question was recently decided by the European Court of Human Rights, which in the above-cited judgement of 29 February 1987, delivered in case B, found against Belgium, inter alia on the grounds of infringement of article 5, paragraph 1 (d). The court took the view that the purpose of resort by the Belgian courts to the application of article 53 of the Act of 8 April 1965 was

neither lawful detention of the minor for the purpose of bringing him before the competent legal authority, nor lawful detention for the purpose of educational supervision, which are the only situations allowed for in article 5, paragraph 1 (d) of the European Convention. As already stated, all the planned changes in the Act of 8 April 1965, at both national and Community level, are designed to meet the requirements of judgement B, each in the relevant sphere of competence.

138. From the legal viewpoint under the criminal law, minors never commit offences but rather acts which, had they been committed by adults, would be classified as offences. Consequently, the only measures which the juvenile court - or the Executive of the Community concerned - can take regarding young offenders are, as in the case of other minors in danger, measures for their protection, care and education, including, as in the exceptional cases referred to above, custody in a local gaol or detention. They are never detained in the penal sense of the term and none of the safeguards applicable to adults, particularly as regards pre-trial detention, are applicable to them.

139. Since the Act of 8 April 1965 provides that officially the juvenile courts may, with regard to minors under the criminal law, only take care and educational measures and may not detain them (even where above-mentioned article 53 is applied), the question arises whether there may be a right to compensation in such cases on the basis of the above-mentioned provision, inasmuch as the provision is embodied in an Act on pre-trial detention. Legal opinion seems to support this view, but the question remains open, as the courts have not yet given a firm ruling on this point, except for a decision dated 3 February 1981 of the Fléron Justice of the Peace, who on the basis of article 5 (5) of the Convention and article 27 of the Act of 20 April 1974 ordered the State to pay a sum of money to the father of a minor who had been held in jail several times for periods of 15 days pursuant to article 53 of the Act of 8 April 1965. This judgement was, however, reversed on appeal by the Liège Court of First Instance on 10 September 1981, and the Court of Cassation rejected an application for review of the decision on 18 November 1982, holding that deprivation of liberty under article 53 amounted to lawful "detention" for the purposes of the Convention.

140. In its defence plea before the Court of Human Rights, when above-mentioned case B was heard, the Belgian Government, in answer to the plaintiff's claim that it was contravening article 50 of the Convention on Human Rights, did not rule out the possibility of a compensation payment under article 27 of the Act of 20 April 1974, were the Court to decide that the plaintiff had been deprived of his liberty under conditions incompatible with the provisions of article 5 of the Convention. In the circumstances of the case, the Court took the view that the question of the application of article 50 was not ready for hearing and should therefore be kept pending with due regard to the possibility of a settlement between the Belgian State and the plaintiff.

141. Note should also be taken of the further information on the composition and jurisdiction of the administrative boards set up for each prison that was given in response to questions put by the members of the Committee on Human Rights at its 821st meeting (CCPR/C/31/Add.3, para. 176, and CCPR/C/SR.821, para. 61; (see also annex 16)).

Article 11

142. No additional further observations are required regarding the comments on article 11 contained in the initial report of Belgium (CCPR/C/31/Add.3, paras. 217-218).

Article 12

143. Paragraph 221 of the initial report of Belgium should be supplemented by the following sentence:

> "Following the changes made to article 108 of the Civil Code under the Act of 19 January 1990 (annex 4), minors who have reached the age of 18 can freely choose their place of residence."

Legal restrictions

Aliens

144. Any alien legally within the territory of Belgium is entitled to free choice of residence. However, in the previous report (CCPR/C/31/Add.3, para. 224), we mentioned that article 6 of the Act of 28 June 1984 concerning various aspects of the status of aliens and instituting the Belgian Nationality Code (annex 30), now permits the Crown to waive this principle if the growth of the foreign population in certain communes which also face other difficulties is deemed detrimental to the public interest. This waiver is not exercised solely on the basis of the density of the foreign population, but on the basis of a "combination of factors genuinely detrimental to living conditions in the commune (difficult economic situation, old or run-down housing, lack of infrastructures, large foreign population finding it difficult to integrate)" (Parliamentary document, Chamber, 1983-1984 session, No. 756/1, p. 7).

145. As at the date of the initial report (15 December 1987), no royal decree restricting the residence or establishment of aliens in some communes had been issued. It should now be pointed out that a Royal Decree was issued on 7 May 1985, prohibiting certain aliens from residing or establishing themselves in some communes in the greater Brussels area. An appeal to annul the Decree is still pending before the Council of State.

146. In this connection, it is significant that, in July 1989, the Belgian Minister of Justice took the steps provided for in article 18 bis, paragraph 2, inserted in the Act of 15 December 1980 by virtue of the Act of 28 June 1984, in respect of the city of Liège. Article 18 bis of the Act of 15 December 1980 on the entry temporary and permanent, residence, and removal of aliens (annex 17), inserted by virtue of the Act of 28 June 1984, stipulates: "The Crown may, on the proposal of the Minister of Justice, by decree deliberated in the Council of Ministers, prohibit, subject to the penalties set out in article 75, as a general measure and for a specific period, aliens other than EEC nationals and persons considered as such under article 40, from residing or establishing themselves in certain communes if

the growth of the foreign population in such communes is deemed detrimental to the public interest. In order to make the said proposal, the Minister of Justice shall have obtained on his own initiative an authentic and reasoned opinion adopted by a two-thirds majority of the commune council concerned, and the reasoned opinion of the Governor of the Province."

147. A copy of the Royal Decree of 10 May 1985 establishing the membership and procedures of the Immigration Studies Commission is attached (annex 31) for information.

Article 13

148. Belgium's initial report (CCPR/C/31/Add.3, para. 231) stated that no measure can be taken to remove an alien legally in the Kingdom, except on one of the grounds listed non-exhaustively in articles 7, 20, 21, 22, 43 and 61 of the Act of 15 December 1980. Articles 11, 52, paragraphs 3, 53 and 56 of the Act should now be added to the above list. It should be noted, however, that articles 52, paragraph 3, and 53 have been replaced by articles 6 and 7 of the Act of 14 July 1987 (annex 18).

149. In addition, various remedies provided for by the Act of 15 December 1980 were mentioned earlier (para. 232); we reiterate them below, with the relevant additions:

(a) An application to the Council of State for annulment of an order to leave the country, deportation or expulsion;

(b) An application to the Minister of Justice for review of a decision denying the right to residence under article 11 of the above-mentioned Act, or of the expulsion order;

(c) An urgent request to the Minister of Justice or his representative for review of the decision of the Minister of Justice or his representative refusing, under article 52, entry into, or residence or establishment in the Kingdom to an alien declaring himself to be a refugee.

This last-mentioned appeal procedure was introduced by article 14 of the Act of 15 July 1987 (art. 63/2 to 63/5 of the Act of 15 December 1980). The Act of 15 July 1987, which is one of the legal measures adopted since the submission of the initial report, significantly amended the procedure for recognition of political refugee status.

Status of political refugees

150. The Act of 15 July 1987 permits entry under new measures not provided for in the earlier procedure. One such measure is the creation of the Office of the Commissioner General for Refugees and Stateless Persons (CGRA) as the body responsible for dealing with all requests for recognition of political refugee status made after 1 February 1988.

151. Various aspects of the present procedure are worth noting:

(a) All applicants are dealt with by a central body, which centralizes applications and thus has an overall view of the situation;

(b) This body is completely independent of the Executive, in particular of the Minister of Justice, in reaching its decisions;

(c) Applicants for refugee status may appeal at the various stages of the procedure against any decisions unfavourable to them;

(d) The CGRA must justify its decisions to refuse refugee status.

152. Other observations are called for regarding this legislation, more particularly the fact that the initial decision concerning entry into Belgian territory is the prerogative of the Minister of Justice and not the CGRA. It should be noted that aliens refused entry by the Minister or his representative may enter appeals which are heard by the CGRA. While the opinion of the CGRA is binding on the Minister's representative, the Minister himself is free to maintain his decision to refuse entry but must, in such cases, set out the reasons for it.

153. For applicants for refugee status received at Zaventem national airport, Centre 127 (reception centre) was opened in the transit area on 1 December 1988. Alien asylum seekers subject to the admission procedure under articles 52, 63, paras. 2 to 5, and 70 bis are housed there pending a final decision. The Centre, which can accommodate up to 28 persons, is always full.

154. In the event of a duly substantiated refusal of entry into Belgium, the Minister of Justice alone may take the decision to have the applicant conducted to the frontier of the country from which he has fled and where he claims his life and freedom would be in jeopardy. The applicant may, however, appeal within two working days to the President of the court of first instance, who will ascertain whether there is any evidence that such a threat genuinely exists. Under the procedure in question, the President must rule within 15 days. If the appeal is upheld, the applicant may not be taken back to the country in question. If it is dismissed, the President may grant the alien a period of not more than one month to seek admission to another country.

Article 14

155. On the basis of the decisions of the European Court of Human Rights, the guarantee of fundamental rights is gradually being extended to disciplinary proceedings. The Court of Cassation has had to amend its practice in regard to internal disciplinary law in order to bring it into line with the requirements of the European Convention. For example, following a ruling by the Supreme Court on 14 April 1983 concerning an architect and a dispensing chemist, the rule that proceedings and pronouncement of sentence shall be public has also applied to disciplinary proceedings. Exceptions may be made only at the wish of the person concerned, where national law permits, and on condition that the waiver is clear and unequivocal.

156. Furthermore, with regard to accumulated judicial functions, on 23 May 1985, the Court of Cassation's ruling on an appeal against a verdict by a disciplinary court of the Medical Council meant that the rule of the independence and the impartiality of the judge now stands as a general principle of law applicable to all courts. This ruling and the clear position it denotes, firmly establish the principle of the objective independence of the examining magistrate in Belgian disciplinary law.

157. Under our legal system, since minors by definition do not enjoy legal competence, the equality provided for under article 14 is understood - and is guaranteed by Belgian law - only within a single catagory, i.e. that of persons who are incompetent by reason of their status as minors. The rights of minors are, in principle, always exercised through their legal representatives, so that they are virtually the same as the rights of the latter. The juvenile court is responsible for legal protection of minors who are in danger, whether the danger is a result of their own behaviour (juvenile offenders, drug addicts, prostitutes) or of the persons looking after them (under-age victims).

158. It should be noted that, without running counter to the concept of the incompetence of minors, various bills for reform of the Act of 8 April 1965 have been prepared in recent years. As already stated, these bills have consistently been designed to provide better guarantees for the fundamental rights of minors, principally the right to a legal defence, which also implies the right to testify in person after a certain age, independently of their legal representatives, the right to be informed of the proceedings and actions in progress and the right to have a counsel other than that of their parents. By making minors "subjects", rather than simply "objects" of rights, these bills endeavour to establish greater equality between adults and minors.

159. The juvenile court is a section of the Court of First Instance, which is organized separately and consists of one or more chambers each with a single judge. Legal actions are brought by the Public Prosecutor alone. The juvenile court has very broad jurisdiction. It may order measures in respect of both minors and their parents. The law also gives it civil-law jurisdiction when the minor's interests are at stake (custody, emancipation, adoption). In such cases, legal proceedings are in principle instituted by the parents, who do so by way of a petition.

160. To date, the Act of 8 August 1988 (annex 2), amending the Act of 8 August 1980 on institutional reforms, empowers the Communities to change the jurisdiction of juvenile courts with regard to the legal protection of minors in danger. The preliminary draft decree of the French Community appreciably alters the role, as described above, of the juvenile court with regard to minors in danger by providing that, in future, the court will intervene only to settle disputes between youth counsellors and young persons, without itself taking any protection measures.

161. As to the procedure by which a decision is taken to issue a protection order, reference should be made to the information given above. It will be noted that protection orders by the juvenile court are issued solely on the basis of the personality of the minor referred to the court and not on the

basis of any acts he may have committed, although the latter constitute the legal basis for referral to the court when the source of such referral lies in acts characterized as an offence and attributed to the minor. The procedure provided for in articles 54 et seq., of the Act of 8 April 1965 gives effect to article 14, paragraph 4, of the Covenant. The guarantees provided for in those articles are equivalent, mutatis mutandis, to those provided for in article 14 as a whole. The juvenile court is, however, vested with discretionary power to take interim measures with regard to minors before handing down a decision. In such a case, the assistance of a lawyer is not mandatory, something which constitutes a de facto obstacle to the possible remedies available to the minor, as shown in the comments in article 2. It is also regrettable that the duration of such interim measures is not limited by law, with the result that it may be quite some time before a decision is handed down after full argument on both sides and in the presence of a lawyer.

162. Since Belgium submitted the initial report all the bills to amend the Act of 8 April 1965, which have thus far been drawn up at national level and have unfortunately been allowed to lapse, endeavoured to remedy this shortcoming by providing for the appointment of a lawyer at the start of the proceedings and by setting a time limit for the juvenile court and the public prosecutor to bring the case to a point where it can be tried on its merits in public. Presumably, however, the text to be proposed by the Minister of Justice will include similar provisions.

Justification of sentences

163. A new Act, of 27 April 1987 (annex 19), on the justification of sentences came into effect on 13 May 1987. It requires the magistrate, in rendering a final guilty verdict, to provide a "clear and methodical explanation" of his reasoning. This obligation, in any event, involves citing the legal provision being applied. Furthermore, a court rendering a decision at first instance must also justify the nature, length and degree of severity of the sentence, (new arts. 163 and 195 of the Code of Criminal Investigation).

Article 15

164. Article 15 calls for no further comment (CCPR/C/31/Add.3, para. 238).

Article 16

165. Article 13 of the Belgian Constitution stipulates: "Total deprivation of civil rights is abolished and shall not be re-established", and article 8 of the Civil Code stipulates: "All Belgians shall enjoy civil rights". Article 84 of the Act of 15 December 1980 (annex 17) on the entry, of temporary and permanent residence and residence and removal of aliens has replaced article 11 of the Civil Code with the following provision:

> "Article 11. Aliens in Belgium shall enjoy all the civil rights enjoyed by Belgian nationals except where otherwise provided by law.

Aliens authorized to settle in the Kingdom and duly entered in the population register shall enjoy all the civil rights accorded to Belgians as long as they continue to reside in Belgium."

Article 93 of the above-mentioned Act of 15 December 1980 repealed article 13 of the Civil Code, concerning what has become the second paragraph of article 11 of the Civil Code, as reproduced above.

Article 17

166. In the initial report (CCPR/C/31/Add.3, para. 256), it was stated that respect for privacy is positively reflected in the Protection of Young Persons Act of 8 April 1965 and, in particular, in article 63, which prohibits the disclosure of information on the loss of parental authority or on measures taken with regard to a minor, to individuals or administrative authorities, notaries or bailiffs, except where such information is essential for the application of a legal or statutory provision, in which case the information must be disclosed under court supervision. Article 77 stipulates that "Any person who, in any capacity whatsoever, contributes to the implementation of this Act", is considered "a depositary of the confidential information entrusted to him in the performance of and in connection with his duties". Respect for privacy is also reflected in article 80, which prohibits the publication and dissemination of records of the proceedings of juvenile courts and of any text, drawing, photograph or likeness liable to reveal the identity of minors who are being tried or who are the subject of a protection order. It should be noted that a provision similar to that of above-mentioned article 77, concerning professional secrecy is included in the Flemish decree of 27 June 1985 (annex 3) concerning special assistance to minors young persons and in the French Community's preliminary draft decree on juvenile assistance.

National register of natural persons

167. At its 816th meeting, the Human Rights Committee expressed the wish to receive further information on the measures introduced by or by virtue of the Act of 8 August 1983 establishing the National Register of Natural Persons, with a view to ensuring protection of citizens' privacy (CCPR/C/SR.816, para. 39). A number of observations made by the Ministry of the Interior in this regard are reproduced below.

168. Under article 6 of the Royal Decree of 3 April 1984 concerning access by some public authorities to the National Register of Natural Persons and the updating and checking of information (Moniteur belge, 21 April 1984), amended by the Royal Decree of 18 July 1985 (Moniteur belge, 1 August 1985), each commune must appoint an official to be specifically responsible for ensuring application of the Act of 8 August 1983 and its implementing orders, with particular reference to the protection of privacy, professional secrecy and the security measures to be taken in connection with access to National Register information and the use of the identification numbers of persons listed in it. The Ministry of the Interior has the particulars of these officials (surname, first name, administrative address and telephone number) for all communes in the Kingdom, so that it may take the necessary measures in

respect of persons who, upon investigation, are found to have failed to meet their obligations regarding the protection of privacy and respect for professional secrecy. Under article 11 of the Act of 8 August 1983, these commune officials are sworn to professional secrecy. They must make every effort to keep the information up to date, correct errors and delete particulars which are outdated or have been obtained by illicit or fraudulent means. They must also take every precaution to ensure the information is kept safe and in particular, to prevent it from being distorted, tampered with or communicated to persons not authorized to have access to it. It should be noted in this regard that a number of communes have taken the step of issuing internal regulations in connection with their obligations under above-mentioned article 11 of the Act of 8 August 1983. A circular of the Ministry of the Interior, dated 27 January 1987 (Moniteur belge, 7 February 1987) reminded communes of all the requirements to be met in order to ensure respect for the privacy and freedoms of citizens, as far as access to commune population registers and the National Register of Natural Persons is concerned.

169. Under the provisions of the Royal Decree of 3 April 1984 concerning the exercise of the right of access and correction by persons listed in the National Register of Natural Persons (Moniteur belge, 13 June 1984), any person on the Register is entitled to obtain the information entered under his name and to have any incomplete or inaccurate particulars corrected. In exercising the right of access and correction, a person is able to ascertain that no sensitive information on his private life has been entered under his name. The procedures for exercising this right are set out in a departmental circular dated 29 June 1987. One of the stipulations in the circular is that the information to be provided to the person requesting it must be communicated to him in an easily understandable form.

170. A monitoring body in the shape of the Consultative Commission for the Protection of Privacy was set up under article 12 of the Act of 8 August 1983. The function of this Commission is, either on its own initiative or at the request of the Minister of Justice, to give its opinion on any matter relating to protection of privacy, in the light of the development and introduction of automated information management techniques. Without prejudice to any recourse procedure before the courts, the Commission considers dated and signed complaints submitted to it concerning the application of the Act of 8 August 1983 and it reports to the Crown Prosecutor any infractions brought to its attention. Royal decrees authorizing the use of the identification numbers of persons on the National Register must be submitted to the Commission for approval, which must be published in the Moniteur belge at the same time as the text of the decree (these decrees are issued on the basis of article 8 of the Act of 8 August 1983).

171. Article 9 of the Act of 8 August 1983 expressly prohibits the use of National Register identification numbers, and consequently of related information, for purposes other than those for which the authorization has been given. Furthermore, Royal decrees authorizing access to information in the National Register (decrees based on article 5 of the Act of 8 August 1983) systematically prohibit the disclosure of such information to unauthorized third parties.

172. Article 13 of the Act of 8 August 1983 stipulates very heavy penalties for failure to discharge obligations stemming from the Act. Specifically, it provides:

(a) Any person who, as a principal or accessory, contravenes the provisions of article 9 described in the foregoing paragraph is liable to imprisonment for eight days to one year and to a fine of 100 to 2,000 francs, or to either of these penalties;

(b) Any person who, as a principal or accessory, impedes the exercise of the right of access and correction defined in article 10 (see para. 169 above), or contravenes the provisions of article 11 (see para. 168 above) is liable to imprisonment for three months to five years and to a fine of 1,000 to 20,000 francs, or to either of these penalties.

Article 18

173. Since article 17 of the Constitution was amended by the provision enacted on 15 July 1988 (annex 20) and pursuant to Parliament's adoption of the Special Act of 6 January 1989 (annex 21) on the Court of Arbitration (see arts. 1 (2) and 2 (2) of the Act), any natural or legal person with adequate grounds may file a petition with the Court to annul a law or decree which allegedly violates the principles set forth in above-mentioned article 17.

174. Under the Act of 6 January 1989, private individuals or legal persons have the same opportunity of filing an appeal in cases of violation of the rules set forth in articles 6 and 6 bis of the Constitution, concerning the equality of all Belgians before the law and non-discrimination. This comment is also valid for articles 2, 14, 25 and 26 of the Covenant.

175. Since 1984, when Belgium's initial report was drafted (CCPR/C/31/Add.3, para. 265), there have been no substantial amendments of the Belgian legislation on religious worship, with the exception of the recognition of the Orthodox religion under the Act of 17 April 1985 (annex 22), the organization of that religion by the Royal Decree of 15 March 1988 organizing Councils of the Orthodox Church (annex 23) and payment of the salaries of ministers of the Orthodox Church under the Act of 12 November 1987 (annex 24). To date, there are five "recognized" denominations in Belgium: Catholicism, Protestantism, and Judaism, Islam since 19 July 1974, and the Orthodox Church the most recent. It should be noted that the legislature does not "recognize" a denomination as such, but simply organizes the legal and therefore material statute governing freedom of worship.

176. As explained in the initial report (para. 270), article 76 of the Protection of Young Persons Act of 8 April 1965 requires the judicial and administrative authorities, as well as natural and legal persons and charitable organizations, institutions or establishments responsible for implementing the measures taken pursuant to the Act, to "respect the religious and philosophical convictions and the language of minors' families". Specifically, paragraph 41 of the annex to the Royal Decree of 22 November 1974, setting out the conditions for official approval for the private sector, provides that:

"The necessary measures shall be taken to enable minors to pursue their moral education and the practice of their religion, if any, in accordance with its precepts and obligations and with the information provided in this regard by the placement authority pursuant to article 76 of the Act of 8 April 1965".

177. This provision is reproduced verbatim in the Executive Decree of 7 December 1987 (annex 12) on the approval and award of subsidies to persons and institutions providing training and supervisory services for the protection of young people, which has replaced the Royal Decree of 24 November 1974 in the French community. The principle laid down in article 76 of the Act of 8 April 1965 is also reproduced, except as regards language, in the Flemish Decree of 27 June 1985 concerning special assistance to young persons and in the draft decree supplementing it.

178. The replies to the questions raised by members of the Human Rights Committee regarding religious freedom should also be borne in mind. They are contained in the summary record of the Committee's 821st meeting (CCPR/C/SR.821, para. 65 (see annex 25)).

Article 19

179. The reader should refer to the comment made at the 821st meeting of the Human Rights Committee (CCPR/C/SR.821, para. 66 (see annex 26)).

Article 20

180. Article 20 does not require any further information.

Article 21

181. Article 21 does not require any further information.

Article 22

A. Freedom of association in the public services

182. The Civil Service Department wishes to replace the material concerning the relations between the public authorities and their employees' trade unions, contained in Belgium's initial report to the Human Rights Committee (CCPR/C/31/Add.3, para. 302 et seq.), by the following (also see annex 27).

183. Freedom of association in the Belgian public service became a reality at the end of the First World War. Two Acts passed on 24 May 1921 implemented the constitutional principle of freedom of association: "Belgians have the right of association; this right shall not be restricted by any preventive measures." (Constitution, art. 20). The first of these Acts repealed article 310 of the Penal Code regarding the offence of combination (a union of persons to achieve a particular purpose; the second guarantees freedom of association without any restrictions, in particular in the protection of occupational interests (annex 27 (b)).

184. The first two articles of this Act state:

"Art. 1: 'Freedom of association is guaranteed in all fields. No one may be forced to belong or not to belong to an association.';

Art. 2: 'Whoever becomes a member of an association agrees by so doing to be subject to that association's regulations and to any decisions and sanctions taken under those regulations. He may withdraw from the association at any time in accordance with its regulations; any regulation eliminating that freedom is considered to be void.'"

185. Trade unionism is considered in Belgium to be one aspect of freedom of association, and hence cannot be expected to figure among the new economic and social rights to be formulated by the Constitution. It has been a reality since 1921, and trade unionism in the public services has thus developed freely.

Occupational relations before 1955: local consultations

186. In the traditional public administrations, trade union statutes based on consultations gradually came into existence. Thus, from 1926 to 1937, with the exception of the joint administrative regimes instituted in the personnel administration of the Belgian National Railways and Belgian National Tramways, local trade union consultations changed over to generalized trade union consultations, especially in the State administrations.

187. After the re-emergence of government activity in the immediate post-war period, the trade union consultation regime, which relates to the statute for employees, the organization of services and work and to safety, hygiene and improvements of the workplaces, was separated from the State employees' statute and dealt with in a separate decree: the Regent's Decree of 11 July 1949 relating to the trade union statute for State employees, which was superseded by the Royal Decree of 20 June 1955 relating to the trade union statute for public service employees.

188. Independently of the provisions of internal law, several international conventions ratified by Belgium also guarantee freedom of association:

(a) International Covenant on Economic, Social and Cultural Rights (art. 8) and International Covenant on Civil and Political Rights (art. 22), concluded at New York on 19 December 1966 and adopted in Belgium by the Act of 15 May 1981;

(b) Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, adopted at San Francisco on 2 July 1948 by the International Labour Conference and adopted in Belgium by the Act of 19 July 1951;

(c) Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, adopted at Geneva on 1 July 1949 by the International Labour Conference and adopted in Belgium by the Act of 20 November 1953;

(d) European Convention on Human Rights (art. 11), signed at Rome on 4 November 1950 and adopted in Belgium by the Act of 13 May 1955.

Act of 19 December 1974

189. The Act of 19 December 1974 organizing relations between the public authorities and unions of staff members of such authorities has replaced the consultation procedure provided, in particular, in the Royal Decree of 20 June 1955. Unlike the former trade union statutes, which took the form of Royal decrees, the current statute is contained in a law, owing in particular to its relevance for employees in the local sector (provinces, communes, associations of communes), and the need to identify objective representation criteria for trade unions, in view of the fact that the trade union election system had been dropped.

Scope of the Act

190. The Act of 19 December 1974 and the Royal Decree of 28 September 1984 implementing it have established a new system of collective relations in a large number of public services, along with other public services which had not previously had a statute.

191. The new trade union statute imposes a legal obligation on the public authority to submit any general measures it plans to take concerning its staff to prior negotiation or to dialogue (depending on the purpose and importance of the measure) with the trade unions representing it.

192. The prior negotiation and dialogue procedures with the trade unions are a formal requirement: a search of them affects the lawfulness of any measure taken without negotiation or dialogue, or resulting from improper negotiation or dialogue procedures.

193. The negotiation and dialogue procedures are organized in a pyramid-like structure enabling the negotiation and dialogue committees to function effectively. Without going into detail, the structure and composition of these committees may be summarized as follows:

(a) At the top three general committees - Committee A for public services as a whole, Committee B for national, community and regional public services and Committee C for provincial and local public services - are competent to conduct negotiations (see above).

(b) National, community and regional public services are divided into a maximum of 25 sectors, each with its own sectoral committee competent to conduct negotiations (Committee D).

(c) Every local authority (provinces, communes, associations of communes, etc.) has a special committee that is competent to conduct negotiations (Committee E).

194. It will be noted that, as a transitional measure, each organizing authority of the subsidized official educational system (i.e. basically the province and commune educational systems) has an individual special committee (Committee E), that is competent in negotiating matters.

195. Measures concerning both national and local public services are negotiated in Committee A. Measures concerning at least two sectoral committees are negotiated in Committee B, whereas measures concerning at least two special committees are negotiated in Committee C.

Representativeness of trade union organizations

196. The Act sets out the conditions for trade union representativeness:

(a) With regard to the general negotiating committees, occupational associations must:

(i) Exercise their activities at the national level;

(ii) Defend the interests of all categories of public service staff; and

(iii) Be affiliated to a trade union organization represented on the National Labour Council (FGTB, CSC or CGSLV).

Three trade union organizations are currently representative on the basis of these provisions and can therefore sit on the three general negotiating committees; the General Public Service Union (CGSP), the Federation of Christian Public Service Unions (FSCSP) and the Free Public Service Union (SLFP).

(b) As to the sectoral committees (and, mutatis mutandis, the special and individual special committees), the E committees, a distinction should be made among the following:

(i) Organizations having a seat on the national, community and regional public service committee have access to all sectoral committees if they can prove that they represent 10 per cent of the labour force in the national, community and regional public services as a whole;

(ii) Any other trade union organization (even if not represented on the National Labour Council) may sit on these committees, provided it establishes the following;

That it defends the interests of all categories of staff in the services covered by the sectoral committee in question;

That it is organized at the national level;

That it is the largest of the trade union organizations other than those mentioned in paragraph (i) and that its members represent at least 10 per cent of the labour force employed in the services covered by the sectoral committee in question.

197. The 10 per cent "count" (which replaces the trade union elections) is conducted every six years by an independent commission composed of three judges. There may also be intervening "counts". The Act grants different prerogatives to trade union organizations, depending on whether they are approved or representative.

198. Approved trade union organizations may:

(a) Intervene with the authorities in the collective interest of the staff they represent or in the interest of one employee;

(b) Assist, at his request, an employee called on to justify his acts before the administrative authorities;

(c) Post notices on the services' premises;

(d) Receive general documentation on the management of the staff they represent.

This approval, which can only be withdrawn exceptionally and only in the cases stipulated in the trade union statute, and not on a discretionary decision by the authority, is the indispensable guarantee that the trade union statute is in keeping with the principle of freedom of association. Approved trade union organizations exercise their prerogatives only in the public services for which they have received approval and only on behalf of the staff whose occupational interests they are defending.

199. Representative trade union organizations may, in addition to participating in negotiation and dialogue:

(a) Exercise the prerogatives of the approved trade union organizations;

(b) Collect union dues on the premises, during hours of work;

(c) Attend competitive and other examinations organized for the employees without prejudice to the prerogatives of the panel of examiners;

(d) Organize trade union meetings on the premises.

Granting of a trade union allowance

200. The Act of 1 September 1980 (annex 27 (e)) provided for the granting of a trade union allowance to some staff members in the public sector and to unemployed persons put to work in that sector, who are dues-paying members of a representative trade union organization. The Act established a Trade Union

Allowance Fund, administered by the Prime Minister and consisting of contributions from the public authorities, and it is applicable not only to staff members covered by the Act of 19 December 1974 but also to other categories of persons (army, teaching profession, etc.).

201. Trade union representativeness under the Act of 1 September 1980 relates to the system established for the staff categories in question, by their occupational relations regimes.

202. The Act of 19 December 1974 specifies the persons to whom it does not apply:

(a) Staff in the service of the House of Representatives and the Senate, the members of the Revenue Court and its staff;

(b) Staff in the service of the Community and Regional Councils;

(c) Judges and clerks of court;

(d) Members of the Council of State;

(e) Armed forces personnel;

(f) Teaching staff of the State universities, the State university centres and the State Faculty of Agricultural Sciences at Gembloux;

(g) Employees in charge of State security in the field of nuclear energy, and the staff assisting them;

(h) Employees in the external services of the Criminal Investigation Administration;

(i) Staff of the Belgian national railways;

(j) Staff of the Belgian National Tramways;

(k) Services with a special trade union statute;

(l) Services having a trade union statute comparable to the one implemented by the Act of 19 December 1974.

203. It should be added that Belgium intends to ratify both the European Social Charter and International Labour Organisation Convention No. 151 concerning Protection of the Right to Organize and Procedures for Determining Conditions of Employment in the Public Service.

Corrections and further explanations concerning Belgium's initial report

204. The Department of the Interior would like to add the following to the third subparagraph of paragraph 297 (b): Among the forms of associations recognized under Belgian law, and enjoying legal personality and limited liability, mention should be made of the possibility recently created by the legislature of setting up firms consisting of only one person.

205. The Department of Employment and Labour has provided the following information:

(a) Paragraph 300: By the Act of 11 June 1987 (annex 28) published in the Moniteur belge of 14 July 1988, Belgium has ratified Convention No. 154 concerning the Promotion of Collective Bargaining, adopted at Geneva on 19 June 1981 by the International Labour Conference. The Convention entered into force in Belgium on 29 March 1989. The provisions of the Convention do not require the adoption of legislative measures or regulations under domestic law in as much as the provisions currently in force under Belgian law, more specifically those of the Act of 5 December 1968 on collective labour agreements and joint committees, already implement the principles laid down in the Convention.

(b) In paragraph 301, the words "Royal Decree of 21 October 1967" should be replaced by "Royal Decree of 21 October 1969". The text relating to freedom of association in the private sector, contained in section B below, should be added to this paragraph.

B. Freedom of association in the private sector

Historical background

206. The French Revolution put an end to the guilds, and the emphasis was placed on the freedom of the individual. The Le Chapelier Act of 14-17 June 1791 abolished groupings of persons belonging to the same trade, thereby rendering any occupational association impossible. There were severe penalties for violations of that Act. The Act of 22 Germinal of year XI (1803) forbade work stoppages and strikes on the part of workers as well as any combination on the part of employers designed "to force wages down unjustly or improperly" (art. 6 of the Act). However, whereas, in the case of the employers, only unjust and abusive combinations were punishable "any combination" of workers was illegal.

207. Freedom of association was recognized again in article 20 of the Belgian Constitution which provided that: "Belgians have the right of association; this right shall not be restricted by any preventive measures". In principle, freedom of association as thus defined could be exercised in all areas (political, philosophical, religious, etc.). However, there were hardly any occupational groupings before the entry into force of the Act of 31 May 1866, which abolished the offence of combination.

208. However, even if combinations as such were no longer forbidden, the fact remained that article 310 of the Criminal Code continued to impose a penalty on "any person who, for the purpose of forcing an increase or decrease in wages, or of preventing the free exercise of industry or work, has committed acts of violence, uttered insults or threats ... either to people who work or to those who employ. The same shall apply to all those who, by assembling near establishments in which work is done or near the homes of those who direct it, have interfered with the freedom of masters and workers". The significant thing is that penalties were applicable to "any person who ..." (thus including employers) and not just to workers. The Act of 31 March 1898

on occupational unions permitted such associations to organize themselves and to defend the rights of their members. However, since such occupational unions had to be approved by the public authorities before they could operate, the system set up by the 1898 Act was not very successful.

209. It was only in 1921 (Act of 29 May) that freedom of association was finally recognized and protected in Belgium in all areas, including work. There are penalties to safeguard the exercise of this freedom. Freedom for trade unions thus stems from this Act of 1921. It provides that:

(a) Occupational organizations can be established without prior authorization and without special conditions;

(b) Such organizations can draw up their own statutes and regulations;

(c) They can freely appoint their leaders;

(d) They have control of their financial management; and

(e) They can establish their own programmes of action.

Substance of freedom of association

210. Freedom for trade unions in Belgium means different things, depending on whether the collective or the individual approach is adopted.

211. At the collective level, competing organizations are forbidden to interfere with each other's activities. In addition, the three trade union organizations considered by the State to be the most representative of the workers must be given equal status by the public authorities (principle of trade union pluralism). The criteria that must be met for a trade union organization to be regarded as representative of the workers are the following:

(a) Representation at the national and inter-occupational level;

(b) Representation in the National Labour Council and the Central Economic Council; and

(c) At least 50,000 members.

212. Likewise, inter-occupational organizations or occupational organizations forming part of or affiliated to the organs mentioned above will also be regarded as representative of the workers. The criteria in question were defined in:

(a) The Act of 5 December 1968 on collective labour agreements and joint committees (art. 3);

(b) The Act of 20 September 1948 on the organization of the economy (amended by the Act of 29 July 1986), in article 14, (2), 4°, (a);

(c) The Act of 10 June 1952, on the health and safety of workers (first art. 1); and

(d) The Royal Decree of 31 July 1986 concerning works councils and safety, hygiene and workplace improvement committees (art. 1, 6°, (a)). This criterion had already been established at an earlier stage in the Royal Decrees of 31 January 1963 and 18 October 1978, now repealed.

213. At the individual level, freedom of association consists of two elements:

(a) The right to belong to an occupational organization (positive freedom of association); and

(b) The right not to belong to such an organization or to withdraw from it (negative freedom of association).

In addition, each person is free to join the organization of his choice. These various principles were, incidentally, confirmed in ILO International Conventions No. 87, concerning Freedom of Association and Protection of the Right to Organize (1948), and No. 98, concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (1949).

Trade union delegations

214. In the national agreement of 16 and 17 June 1947 on trade union delegations, both positive freedom of association and negative freedom of association were included in a dual commitment:

(a) On the one hand, the employers acknowledged the right of workers to belong to an occupational organization and to establish trade union delegations in the firm (positive freedom); and

(b) On the other, the occupational organizations of workers undertook to respect the freedom of every worker not to belong to a trade union (negative freedom of association).

215. It was once again by means of an agreement that the regulations on trade union delegations was established in Collective Labour Agreement No. 5, of 24 May 1971, concluded in the National Labour Council (annex 29). This is a framework agreement and it must be implemented by first reaching collective agreements in the joint committees. In a firm, the trade union delegation is, inter alia, competent to negotiate collective agreements and to monitor the application of social legislation and the respect for agreements, work regulations and individual contracts. It also intercedes to settle any collective or individual dispute that occurs within the firm. In order to ensure that trade union representatives are independent in carrying out their duties, special protection against their dismissal has been provided. They cannot be dismissed for reasons connected with the exercise of their mandate. If an employer is considering dismissing a trade union representative for any reason whatsoever - other than a serious reason - he must immediately inform the trade union delegation and the organization which submitted the candidature of that representative. Collective Labour Agreement No. 5 lays down a special procedure for accepting or refusing the reason given by the employer. If the dismissal is for serious reasons, the trade union delegation must be informed of it immediately. If an employer has not respected these

provisions, or if he has dismissed a representative for serious reasons which have not been accepted as well-founded, etc., the employer is liable to pay a lump-sum compensation equal to the person's gross wages for one year, without prejudice to the payment of the compensation for lack of notice.

216. Other representatives of the staff enjoy similar protection against dismissal: the representatives of the staff on the works council and on the safety, hygiene and workplace improvement committee. This protection is afforded under the Act of 20 September 1948 on the organization of the economy (works councils - art. 21, para. 2) and the Act of 10 June 1952 on the health and safety of workers and on working conditions and workplaces (Safety and Hygiene Committees - art. 1 bis, para. 7). In these two specific cases, the employer cannot dismiss the staff representative except for a serious reason previously accepted by the Labour Court or for economic or technical reasons previously recognized by the competent joint committee.

217. If an employer breaks the contract of a protected worker without respecting the special procedure laid down by the Acts in question, or for reasons other than those specified in the legal provisions, he must:

(a) Reinstate the dismissed worker, if so requested; or

(b) Pay compensation corresponding to the wages still to be earned up to the expiry of the person's mandate (with a maximum of 4 years), together with an indemnity equal to:

(i) Two years' wages when the worker has less than 10 years of service;

(ii) Three years' wages if he has between 10 and 20 years of service;

(iii) Four years' wages if he has more than 20 years of service.

This is payable without prejudice to the right to any higher compensation due by virtue of the contract or custom and to any other damages for material or moral harm.

Freedom of association and social dialogue

218. The constitutional and legal guarantees for freedom of association have contributed to the particularly noteworthy growth of social dialogue in Belgium. The entire economic and social life of the country reflects the importance of trade unionism in recent decades. We have in mind, for instance, the large number of acts, decrees, regulations and collective agreements concluded in the National Labour Council that give quite broad powers to the joint bodies, which are, of course, made up of representatives of the workers' organizations and representatives of the employers' organizations. These powers are usually advisory but, an opinion that must be given in a specific manner and unanimously clearly has some authority. The joint committees sometimes make requests or proposals. In some cases, they may even take decisions which can subsequently be made mandatory by a royal decree.

219. In other cases again, the functions of the joint committees are quasi-judicial (settlement of disputes concerning the preparation of work regulations - Act of 8 April 1965, art. 11) or even standard-setting (work regulations prepared by the joint committee itself in the event of a dispute; determination of measures, benefits or services which are to be guaranteed in the event of a voluntary collective work stoppage (strike) or of collective dismissal of the staff, with a view to coping with some vital needs, carrying out certain urgent work on machinery or equipment, or performing certain tasks required by force majeure or an unforeseen necessity - Act of 19 August 1948, art. 1).

220. In addition, trade union representatives are also to be found in bodies (in the firms) which are not joint but of a mixed type, such as a trade union delegation, a works council or a safety, hygiene and workplace improvement committee. The members of these various bodies are elected by the workers once every four years.

221. Again, occupational organizations submit candidates for appointment to the Central Economic Council, the National Labour Council, the vocational councils and the committees for the management of social security bodies, as well as social assessors in the labour courts. It should also be mentioned that, since the 1987 periodic elections, a new socio-occupational group has been entitled to elect its representatives in separate electoral colleges (for the works councils only). These are the salaried staff.

222. A new advisory organ was established under Royal Decree of 16 July 1987 (Moniteur belge, 28 July 1987), i.e. the "Salaried Staff Dialogue Committee", whose members were submitted on a double list by the professional organizations representing the salaried staff. This Committee, whose members were appointed by a Ministerial Order of 16 October 1987 (Moniteur belge, 29 October 1987), gives opinions, engages in research or proposes legal measures or regulations on all subjects directly or indirectly connected with the salaried staff, either on its own initiative or at the request of the Minister of Labour.

Article 23

223. The right of any person of marriageable age of either sex to marry freely and to found a family is recognized (cf. also article 12 of the European Convention on Human Rights). The Act of 19 January 1990 (annex 4), lowering the age of majority from 21 to 18, raised the marriageable age to 18 for both a girl and a boy; it had previously been 15 years for a girl and 18 years for a boy.

224. A minor, under 18 years of age, who wishes to marry must meet two conditions:

(a) He or she must obtain a waiver of the age-limit from the Juvenile Court; and

(b) He or she must obtain the consent of both parents. If they refuse their consent, the juvenile court can, however, authorize the marriage if it deems the refusal to be an abuse, i.e. if it finds that the refusal is for

selfish reasons. If one of the parents refuses his or her consent, the juvenile court can authorize the marriage if it finds that the refusal is not well-founded. It should be noted that, if one of the parents does not appear in court, he or she is assumed not to have consented to the marriage. If one of the parents is unable to express his or her wish (because he or she is under a judicial disability, has forfeited parental authority or has been certified insane) and the other refuses his or her consent, the juvenile court may authorize the marriage if it deems the refusal to be an abuse. If neither parent is in a position to express his or her will or if neither parent appears in court, the marriage may also be authorized by the court.

225. It should be noted that the waiver of the age-limit and the authorization of the juvenile court can be given on one and the same occasion, the court having to reach a decision within a fortnight of receiving the request. The request has to be submitted either by one or both parents or by the minor himself or hereself if the parental consent is lacking. Young people over 18 years of age no longer need any authorization to marry.

Article 24

226. As to distinctions on grounds of birth, it should be noted that a basic change in the right to filiation was made in 1987 (Act of 31 March 1987, (annex 32)). It is a reform that is in keeping with the work of various international institutions. Thus, the Declaration of the Rights of the Child, proclaimed by the General Assembly of the United Nations on 20 November 1959, states that the child needs special safeguards and care, including appropriate legal protection, before as well as after birth, without any distinction on account of birth or other status. Similarly, on 15 May 1970 the Committee of Ministers of the Council of Europe adopted a resolution on the social protection of unmarried mothers and their children, in which it recommended that Governments should alert public opinion to the problems of unmarried mothers and their children and guide society to a greater understanding of their situation, so as to abolish any discrimination against them and to have them accepted on an of equal footing with other families.

227. Moreover, on 13 June 1979 the European Court of Human Rights ruled against Belgium in the Marckx case relating to the recognition and status of a natural child. It had thus become necessary, with due regard for the changes in morals and in ideas, to adapt Belgian legislation and bring it into line with the requirements of the European Convention on Human Rights.

228. The Act of 31 March 1987 led to a complete recasting of the provisions on filiation in the Civil Code. Based, inter alia, on article 6 of the Constitution, which guarantees the equality of all before the law, the new provisions seek chiefly to do away with any hierarchy and any discrimination between filiations. This approach was reflected both in the form of the Act (which removed any reference to the terms "legitimate", "natural", "adulterine" and "incestuous") and in its substance, by rules that respond to the following triple requirement:

(a) Authorizing, almost unreservedly, the establishing and challenging of any filiation. The sole restriction that remains concerns children formerly described as incestuous;

(b) Ensuring complete equality between all children, whether or not born in wedlock as regards both their rights and their obligations; and

(c) Striking an indispensable balance between protection of the family unit that is a result of a marriage and the rights of children formerly described as "adulterine".

229. Very briefly, the major principles of the Act can be summarized as follows:

(a) Every child's maternal filiation is established simply by mentioning the mother's name on the birth certificate, in application of the maxim: mater semper certa est.

(b) As to paternal filiation, the husband is presumed, as much as possible, to be the father; in the case of children who do not benefit from this broad presumption, the Act encourages, to the greatest possible extent, recognition of all children by their fathers and also paternity suits in which proof of any kind is produced.

(In this connection, it is worth mentioning an innovation contained in article 331 octies, which provides that, in filiation suits, "the courts may order, on their own initiative, a blood test or any other examination, according to scientifically tested methods".)

(c) Whatever the method used to establish filiation, the value of the child's successional share is now identical.

(d) Lastly, the Act has tried to reconcile the rights of the child formerly described as "adulterine" with the interests of the family resulting from the marriage. In order to do so, certain arrangements in favour of the spouse and the children born in wedlock have been established, but do not prevent the child born out of wedlock from establishing his filiation or obtaining the same advantages as regards the size of his successional share. To respond to this reconciliation requirement, the Act has, for instance, provided that the "adulterine" child cannot be brought up in the conjugal residence without the agreement of his or her progenitor's spouse (Civil Code, art. 334 bis).

230. As regards surname, new article 335 of the Civil Code determines what surname will be used by the child born in or out of wedlock on the basis of three principles:

(a) Priority attribution of the father's surname in cases of simultaneous establishment of filiations;

(b) Stability of the surname, unless the parents expressly desire otherwise; and

(c) Protection of the moral interests of the conjugal family.

231. It should also be noted that the legislation on adoption was greatly changed, both in form and in substance, by three laws enacted in 1987 with a view to encouraging adoption and enabling certain underprivileged children (e.g. foundlings) to be accepted into a family. Formally, in the first place, the term "full adoption" has been substituted for "legitimation by adoption", the concept of "legitimation" having disappeared from our law as a result of the reform concerning filiation. On the substantive side, the comments given below draw attention to the chief amendments that have been made.

Act amending article 358 of the Civil Code, concerning the adopted person's name

232. This Act (see annex 32 (a)) has widened the range of possibilities open to the parties in selecting the surname of the adopted person. In future, when the adopted person is an adult, they may agree that he will use only his or her original surname, since professional or economic imperatives may justify this.

Act of 27 April 1987 amending various legal provisions relating to adoption

233. This Act (see annex 32 (b)) introduced several substantive amendments:

(a) It lowered the qualifying age for an adoptive parent from 35 to 25, and specified that the requirement need not be met until the day the adoption is officially registered;

(b) It allowed full adoption by single individuals, whereas previously legitimation by adoption was an option open only to married couples;

(c) It made three important changes in the requirement that the child's original family must consent to the adoption:

(i) to favour adoption and encourage discretion towards the child's original family, it allowed the consent of a de facto separated husband to be dispensed with in certain cases (Civil Code art. 348, para. 1). Thus the consent of the mother alone may now suffice, provided that the child, born of a married woman who has been living separately from her husband for more than 300 days, has no apparent status vis-à-vis the father, that the spouses were not actually living together again at the moment of conception and that the birth was not concealed from the husband;

(ii) It introduced the principle of blanket consent (art. 349 of the Civil Code). The father and mother, or the single person whose consent is required for adoption, can now leave it to a third party (who may be a private individual or an institution) to choose adoptive parents and the individual who will, if necessary, stand in for the adoptive child's parents in the proceedings;

(iii) Consent to adoption may not now be given until two months after the birth of the child (Civil Code, art. 348, para. 1).

(d) It radically reformed international filiation by adoption (arts. 344, 344 bis, 344 ter, 344 quater).

234. To encourage the international adoption of young children, the eligibility requirements for adopting children aged under 15 have been relaxed considerably. When an adoptive child is under 15, it is no longer a requirement that both the national law of the adoptive child and that of the adoptive parent must recognize adoption as an institution. It is enough for adoption to be permissible under the law of the adoptive parent (Civil Code, art. 344). Article 344 also deals with conflict of laws when there is more than one adoptive parent and the personal status of each is subject to different laws.

235. As regards recognition by Belgium of filiation by adoption abroad, the adoption is now recognized not only as it was previously (i.e. if all the parties met the requirements imposed by their personal status) but also if it took place in circumstances under which it would have been permitted in Belgium (art. 344 bis).

236. The effects of adoption are now governed, in the case of a child aged under 15, by the law which applied to his or her eligibility, and by Belgian law when the adoptive child is aged over 15 (art. 344 ter).

Act of 20 May 1987 on abandoned minors

237. This Act (see annex 32 (c)) instituted a procedure whereby abandoned children can acquire the status of adoptive children. The juvenile court may declare any child to be abandoned when the child is taken in by an individual or by an institution and the parents have manifestly taken no interest in him or her during the year preceding the application for recognition of abandoned status. Having found that the parents are manifestly taking no interest in him or her, the juvenile court may entrust the child to the care of a family member who has personally undertaken to maintain him or her, offers to do so or expresses a wish to adopt him or her. In the absence of such a person, the court will declare the child abandoned and appoint a guardian to arrange for his or her adoption. Such children can be adopted without the need for the father's or mother's consent.

Article 25

238. Belgium does not share the view of the Human Rights Committee that the obligation to vote is incompatible with the freedom of conscience guaranteed by the Covenant (CCPR/C/SR.822, para. 45). On this point it can only be restated that the obligation derives from article 48, paragraph 3, of the Constitution and that this provision was not submitted for revision (see the announcement of 8 November 1987 on the review of the Constitution, published in the Moniteur belge on 9 November 1987). Furthermore, as the Belgian representative clearly pointed out during his introduction of the report (CCPR/C/SR.821, para. 37), every citizen is entitled to deposit a blank or void ballot paper, so that while he is indeed required to report to the polling station he is not required to cast a vote.

239. As regards rights of aliens to vote, a coordination meeting was held on 27 January 1989 to discuss a draft directive of the Council of the European Communities on EC nationals' right to vote in local (municipal) elections in whichever EC State they may be resident. Still, given the current status of article 4 of the Constitution, which likewise was not submitted for revision, no political rights of any kind can be granted to persons who are not Belgian, except as may later be permitted under a new article 107 bis of the Constitution governing the relationship between the rules of Belgian and of international or supranational law.

Article 26

240. This article calls for no additional comment.

Article 27

Belgium: A bipolar, devolutionary federal system

A. The unitary decentralized State of 1831

241. The authors of the 1831 Belgian Constitution envisaged a democratic Belgian State ruled by law and based on a flexible separation of powers, like a parliamentary monarchy and like a unitary decentralized State. The structure of the unitary decentralized State as it remained, unaltered, until 1970, was relatively simple and transparent: beside the central organs of State there were the provinces and communes, which were regarded as subordinate authorities. As juridical persons distinct from the State, they had jurisdiction over "all matters of concern to the province and the commune", but this unspecified jurisdiction was not unlimited.

242. The basis of the State was the nation: "All power derives from the nation". The Constitution provided that "The members of the two (legislative) Chambers represent the nation, not just the province or provincial subdivision that appoints them". Hence members of the national legislature were "sovereign representatives of the nation".

B. From 1831 to 1970

243. The unitary decentralized State could last only as long as the underlying political and social structure was relatively homogeneous, as it had been in 1831.

244. The constitutional rule that "any of the languages commonly spoken in Belgium may be freely used" and "[the use of languages] cannot be restricted except by law and then only for the affairs of the public authorities and for legal matters", affords a striking example. At the time it was clear that a legal regime could be used to impose French throughout the country. According to an order of 16 November 1830, French was the only official language for use in laws and orders. Subsequent representations by the Flemish Movement initially took the form of a demand for Dutch to be recognized in Flanders alongside French. An Act passed in 1898 required laws to be voted on, approved, promulgated and published in both French and Dutch. The extension

of the right to vote, in the constitutional reviews of 1893 and 1921, gave the Flemish Movement more authority by means of a system whereby, after 1921, elections were held under a system of proportional representation.

245. Following on from the language legislation of 1932, the legislation passed in 1962 and 1963 laid the foundations of the principle of territoriality, which states that in monolingual regions a given language, that of the region concerned, is to be used in all affairs of the public authorities, whatever branch of government they belong to. This legislation defined linguistic boundaries and divided the country into four linguistic regions, in an arrangement which was set out in the Constitution in 1970: three monolingual regions, French-, Dutch- and German-speaking, and the bilingual Brussels-Capital Region. In the monolingual regions all public affairs should in principle be conducted exclusively in the language of the region concerned. Only in the bilingual Brussels-Capital Region are French and Dutch used on an equal footing. Finally, the legislation allows the inhabitants of the 27 communes bordering on a different linguistic region the "linguistic option" of asking the commune authorities to use a language other than the one of the region in which the commune is situated.

246. The Belgian institutional system is "an elaborate system of checks and balances". It could hardly be otherwise in a country where, at the national level, the seats in the legislative Chambers that are filled by direct elections are allocated according to a proportional representation system that depends on the population of each electoral district, and the population is higher in the Dutch-speaking region than in the other linguistic regions; in contrast, in the Brussels-Capital Region, the imbalance the other way is still more pronounced, with a French-speaking majority and a Dutch-speaking minority. Accordingly, numerous steps to protect minorities were taken during the first State reform, the constitutional revision of 1970.

247. The revision introduced a new type of "qualified majority" law, a "law adopted by majority vote within each linguistic group in each (legislative) Chamber, provided the majority of members of each group is in agreement and that the total number of votes in favour cast in both linguistic groups amounts to two thirds of all the ballots cast". This requirement that laws should be passed "by community majority" applies to an exhaustive list of instances specified in the Constitution. The aim is to prevent basic legislation being drafted against the wishes of one of the country's major communities, which is why the assent of both the French linguistic group and the Dutch linguistic group in each legislative Chamber is stipulated.

248. To prevent any legislative initiative which could "seriously affect relations between the (two large) communities" being carried in Parliament by a majority linguistic group, an "alarm-bell procedure" has been developed. This can be triggered by a motion with supporting arguments signed by at least three quarters of the members of either linguistic group. If it is triggered, parliamentary proceedings are suspended. The Council of Ministers must within 30 days provide an opinion with supporting arguments on the motion and invite the legislative Chamber concerned to take a decision on that opinion or

the (possibly amended) legislative initiative. The protective effect of this procedure is evident: the Council of Ministers, with the same number of members from either community, will do its utmost to reach consensus in order to avoid a government crisis.

249. Just as the "alarm-bell procedure" is mainly intended to protect the French-speaking minority in the national legislature, parity within the Council of Ministers provides it with a safeguard in the national executive: "with the possible exception of the Prime Minister, the Council of Ministers shall contain as many French-speaking as Dutch-speaking ministers". The fact that many orders, regulations and decisions must, by virtue of the Constitution, the law, regulations or indeed, custom within Belgian coalition governments, be discussed in the Council of Ministers amply illustrates the importance of this stipulation of parity. The requirement does not extend to Secretaries of State: although members of the Government, they do not sit on the Council of Ministers. Thus it is possible to reflect to some extent the demographic preponderance of Dutch speakers in the composition of the Government.

250. Every Community Council has an "alarm bell procedure": a motion with supporting arguments signed by a set number of council members may state that a particular draft or proposed decree is discriminatory on ideological or philosophical grounds; discussion of the contested provisions is then suspended until both legislative Chambers declare the motion unfounded. Without prejudice to the general principle of non-discrimination, special arrangements have been made pursuant to the Constitution to protect "ideological and philosophical tendencies" in cultural matters against the Executive by a variety of means, including the use of cultural infrastructure and means of expression. Since the 1988 constitutional revision, anyone who can demonstrate an interest can apply directly to have legislation overturned by the Court of Arbitration on the grounds that it violates, say, the principle of equality or that of non-discrimination in ideological or philosophical as well as other matters.

251. The Brussels-based institutions have taken a parallel approach to protecting the Dutch-speaking minority to the nationwide safeguards for the French-speaking minority, i.e. an "alarm bell procedure" in the deliberative body and parity, except for the Chairman and the "regional Secretaries of State", in the Executive.

252. Much of the justification for these protective measures can be found in the bipolar structure of the State: although Belgium is divided into four linguistic regions, three Communities and three Regions, the "Belgian problem" seems to be the existence of two large communities, French-speaking and Dutch-speaking, in one and the same country. Hence the requisite guarantees of fairness are always found in nationwide structures. Among the higher jurisdictions, the Court of Arbitration, the Court of Cassation and the Council of State must all have equal numbers of French- and Dutch-speaking judges. In the central State services concerned with activities that cover the entire country, in the local services set up in the Brussels-Capital Region and in the Executive of the Brussels-Capital Region, jobs above a certain level are apportioned equally between French-speaking and Dutch-speaking officials.

C. State reform in three consecutive constitutional revisions (1970-1980-1988)

253. Like bipolarity, the devolutionary trend of advancing federalism in Belgium marks a departure from the usual federal practice, which is to seek unity through the amalgamation of previously sovereign entities. This centripetal tendency explains why most federal constitutions explicitly enumerate the powers of the federal authorities and leave the remainder to the federated entities. By contrast, Belgian devolutionary federalism implies enumerating the powers of the federated entities, while residual power is left in the hands of the national authorities. This is the current position. Devolutionary federalism means that the Belgian State has progressively turned into a federal State since the Communities and Regions were set up.

254. The shift of emphasis to the Communities was the response to a demand by the Flemish part of the country, which has always sought recognition for and genuine development of its own language and culture. Hence three "Cultural Communities" , French, Dutch and German, were recognized in the 1970 Constitution, each with its own institutions authorized to issue legally binding decrees, in the area under its jurisdiction, on cultural matters and, to a lesser extent, on education and the use of languages. In the 1980 constitutional revision, "cultural autonomy" became "community autonomy" as the Communities' authority was extended to cover "personalizable" matters and they were allowed to have their own executive organs. In the 1988 constitutional revision this community autonomy was extended yet again, after the incorporation into the Constitution of safeguards regarding education, by the transfer to the Communities of virtually complete authority over education and even the authority to conclude treaties on matters within their jurisdiction.

255. While the shift of emphasis to the Communities came about chiefly in response to the desires of the Flemish part of the country, regionalization has come more in response to the wishes of the French speakers. The Walloons put their trust in autonomy, above all in socio-economic affairs, hoping to overcome the economic crisis which affected their region in particular. The French-speakers of Brussels, who are in the majority in the Brussels-Capital Region, sought recognition of the capital as a distinct region equal in importance to Wallonia and Flanders. The 1970 constitutional revision ultimately recognized three regions: the Region of Wallonia, the Region of Flanders and the Brussels Region.

256. As the relevant constitutional provision, article 107 quater, did not explicitly give legislative powers to the Regions as distinct from the Communities, and as Belgian public law stipulates that legislative authority lies only with bodies in which it is vested by the Constitution, a new constitutional provision, article 26 bis, was added in 1980. This provides that the power to issue decrees may be granted to regional bodies by a qualified majority law. This was subsequently done for the Regions of Flanders and Wallonia, but not for the Brussels-Capital Region, which was given the authority to pass "ordinances", a new kind of enactment in Belgian public law: like decrees, ordinances may abrogate, supplement, amend or supersede current legislation and are likewise subject to review by the Court

of Arbitration: unlike decrees, ordinanaces are subject to limited juridical review, and in some cases to limited administrative review by the national authorities in order "to preserve Brussels' international role and function as the capital city".

257. Article 107 quater states explicitly that regional powers do not extend to community matters. The drafters of the Constitution took as their starting-point a clear separation between the Communities and the Regions. None the less, the constitutional provision relating to the Communities, article 59 bis, was amended in 1980 to allow Flemish Community bodies to exercise jurisdiction over the Flemish Region, and French Community bodies to exercise jurisdiction over the Region of Wallonia, by virtue of a qualified majority law. This change was made chiefly at the wish of the Flemish population, who wanted to lay further emphasis on Belgium's bipolar structure. Given that the French-speaking Community predominantly thinks in terms of three-way regionalization, the provision has been applied "asymetrically": it has not been put into effect as such on the French-speaking side, but is operative on the Flemish side, with the authority of the Flemish Community and the Flemish Region being exercised by the same bodies, the "Flemish Council" and the "Flemish Executive", although there has been no "merger" between the Community and the Region in the legal sense of the word.

258. Until 1980 the financing received by the Communities and Regions consisted exclusively of "grants" from the national budget apportioned to them according to set criteria, which they could disburse by autonomous decision. During the second State reform, in 1980, because Belgian public law stipulates that fiscal powers and the power to disburse funds belong only to authorities in which they are vested by the Constitution, the Communities and Regions were established by the Constitution as authorities with their own fiscal powers. Despite a significant increase in the funds available to the Communities and Regions, their autonomy as regards revenue-raising is still very limited. Most of their resources come from "earmarked shares of national taxation revenue", which are distributed in proportion to original tax receipts or according to the principle of a "fair return". An element of collective responsibility such as is found in any federal State was also included in the financing system.

259. The 1980 constitutional revision established a Court of Arbitration. It serves as a "constitutional court of limited jurisdiction". This is an important innovation, for since the founding of the Belgian State it had always been the responsibility of the legislature, not the Courts, to verify that laws were in keeping with the Constitution. The change was inevitable since community- and regional-level legislatures had just joined national legislatures in holding the power to pass enactments with the same force as national law, i.e. "decrees". Leaving each legislative body to decide whether its own enactments were in keeping with the rules on the division of powers laid down in the Federal Constitution threatened to spawn several interpretations of the same Constitution and, hence, endanger the unity of the State. Furthermore, the normal rule for handling conflicts between enactments, namely that the higher enactment takes priority, could not be applied because laws and decrees were of equal standing. The reason for assigning the resolution of conflicts of jurisdiction between laws and decrees or between

different decrees not to the ordinary courts but to a new institution, the Court of Arbitration, lies in the doctrine of the "inviolability of the law" and the desire of those who drafted the Constitution to vest the authority in a single institution in order to ensure uniform jurisprudence. The legislative Chambers avoided establishing "rule by the courts" both by limiting the Court of Arbitration's supervisory authority to verifying whether legislatures had respected the rules on division of powers laid down in the Constitution and implementing statutes and by stipulating that the Court should be a mixed body, drawing half of its members from legal or academic circles, and half from former members of Parliament.

260. The Court of Arbitration has turned its attention not only to the unity of the State but also to a broad interpretation of community and regional powers, a clear demonstration of an exclusive division of powers, and a broad understanding of the "rules on the division of powers" which form the basis of its supervisory activities. It has, for example, decided that the "implicit powers" of the Communities and Regions do not extend to the regulation of matters reserved by the Constitution for the national legislature, such as basic rights and freedoms, except as explicitly permitted by laws on State reform. It has also ruled that the new structure of the Belgian State is rooted in economic and monetary union: this position was taken up later in the special Act of 1988, whereby economic and monetary union was given legal standing by making it a limitation on the authority of the Regions in economic matters. Lastly, the Court has seldom exercised its power to suspend enactments against which an appeal has been lodged.

261. The jurisdiction of the Court was considerably broadened in the constitutional revision of 1988. The right to apply directly to the Court of Arbitration to have a law or ruling overturned, previously confined to the political authorities, was extended to "any person who can demonstrate an interest", including individuals and legal persons under private law. More important, however, was the extension of the Court's supervisory powers to verify that enactments are in conformity with the three basic rights enumerated as such, namely the principle of equality, the principle of non-discrimination, and freedom of education. The main reason for this extension of jurisdiction was the transfer of virtually all authority in educational matters to the Communities: the minorities in Flanders and Wallonia called for more explicit and complete educational safeguards to be written into the Constitution (art. 17), and the Court of Arbitration seemed the appropriate body to verify that the various legislative bodies respected these safeguards.

D. Belgium: a federal State

262. Federalism is a legal system which strikes a balance between the power of the central authorities and the autonomy of its constituent entities in the institutions of a State. The individual characteristics of a State mean that each is sui generis: in the "Belgian interpretation", the dominant feature is the bipolar and devolutionary nature of the State. The inherent complexity of a federal State structure lies in the existence of two distinct legal orders, that of the whole, and that of its constituent parts, each with its own set of laws and institutions. In Belgium, the Communities and the Regions are "authorities with the same standing as the national authorities" which apply

the principle of vertical hierarchy whereby, except as explicitly otherwise provided by the Constitution or a qualified majority law enacted by virtue of the Constitution, a political body with the authority to pass legislation is also responsible for putting that legislation into effect.

263. The Communities and the Regions are autonomous legal persons which have their own legislative and executive bodies and, conversely, legislative authority and financial autonomy.

Legislative and executive bodies

264. Each Community and each Region has an assembly, the "Council", and an executive body, the "Executive". The three "big" Councils - the Flemish Council, the French Community Council and the Walloon Region Council - are made up of members of the national Parliament, according to linguistic group: their stability is thus dependent on that of the legislative Chambers. By contrast, the two "small" Councils, the Council of the German-speaking community and the Council of the Brussels-Capital Region, are elected directly for a fixed period and cannot be dissolved ahead of schedule. The Executives are elected by majority vote in each Council from among its members, and are accountable to the Council concerned; the Council can only force the resignation of the Executive through a "constructive motion of no confidence".

Legislative authority

265. The Communities and the Regions have legislative authority equivalent to that of the national legislature. In a number of areas of social life they have exclusive authority to enact "decrees" which have the force of law in the areas under their jurisdiction.

(a) The equal legal standing of national, community and regional enactments is not incompatible with the general principle of federalism that "Bundesrecht bricht Landesrecht" (federal law overrides regional law). That rule only applies to conflicting enactments which, in Belgian public law, are the exception to the rule.

(b) In its rulings, the Court of Arbitration has emphasized the exclusiveness of the division of powers both ratione materiae and ratione loci. Since some aspects of a matter may come exclusively under one particular authority, it is possible that, in one and the same area, different measures may be taken cumulatively and in parallel, by and at different levels of authority, without one enactment being subordinated to another. As one authority's policy may conflict with another's without either authority exceeding its jurisdiction, the Court of Arbitration and the Council of State apply the principle of proportionality, which is becoming a yardstick for jurisdiction: no authority pursuing the policy assigned to it may, without good reason, take measures so radical that another authority experiences serious difficulties in carrying out the policy for which it is responsible.

(c) The powers of the Communities and the Regions, although assigned exhaustively, are very broad. The Communities have jurisdiction over cultural matters, education, personalizable matters, international cooperation in those areas and the use of languages for administrative tasks, for teaching and for

business relations between employers and their staff. The Regions have jurisdiction, wholly or in part, over land development, the environment, rural regeneration and nature conservation, housing, water policy, economics, energy policy, subordinate authorities, employment policy, public works and transport. These powers may be exclusive but they are not all encompassing: some subjects form exceptions to the rule and fall within the purview of neither the Communities nor the Regions, but are the preserve of the national authorities.

(d) It would nevertheless be wrong to place a narrow interpretation on the jurisdiction of the Communities and the Regions because their powers are assigned to them. The Court of Arbitration holds that powers assigned to the Communities and Regions must be regarded as having been transferred "wholesale" and "in their entirety".

Financial autonomy

266. The Communities and the Regions have at their disposal the financial means to exercise the powers assigned to them.

267. Participation by constituent entities in federal decision-making is another basic feature of a federal State: the federal constitution apportioning powers between the federal authorities and the constituent entities can only be modified with the agreement - or at least the involvement - of the federated entities; these entities take part as such, notionally on an equal footing, in a Union-level legislature, thereby making a real contribution to the drafting of federal legislation. The Belgian bicameral system has not yet been adapted to suit the federal structure of the State: the Chamber of Representatives and the Senate, which have almost identical powers, are, contrary to the practice in federal States, virtually identical in composition. The Crown, the Chamber of Representatives and the Senate together write and amend the Constitution and enact national legislation. Hence the Communities and the Regions take no part either in reviews of the Constitution or in the drafting of national legislation. Still, as the "big" Councils are made up of directly elected members of Parliament, they are involved, albeit indirectly, in federal decision-making within the legislative Chambers. Besides, enactments contrary to the interests of either Community could not conceivably be adopted in the national Parliament. Furthermore, the linguistic groups play a far from negligible role in the formulation of qualified majority laws.

268. Modern federalism has added a third principle to those of autonomy and participation. "Dualist federalism", in which a union and its federated entities are treated as autonomous, wholly contrasting authorities and the separation of their spheres of competence leads to a lack of cooperation in the exercise of their respective powers, has had to give way to a universal truth, namely, that levels of authority cannot be kept perfectly separate and that some interdependence and mutual influence in the exercise of power is inevitable. Such "cooperative federalism" has given rise to many kinds of cooperation, often informal, which may diminish possible conflicts and devolutionary tendencies. Belgium has undergone a similar process.

269. Besides the legal equivalence of laws and decrees, exclusive jurisdiction has been regarded as a necessary condition for the continuing autonomy of the Communities and Regions. The inevitable clashes between State, community and regional authority have given rise to various kinds of cooperation. The third State reform did away with certain legal objections based on the principle of autonomy and expanded opportunities for cooperation. Belgian public law now acknowledges various forms of cooperation between the State, the Communities and the Regions, such as the possibility of reciprocal representation on managerial and policy-making bodies, agreements to cooperate - which may be binding - a variety of collaborative procedures, and inter-ministerial conferences comprising members of the national Government and the Community and Regional Executives.

Annex

LIST OF ANNEXES*

1 (a) Special Act relating to Brussels institutions

1 (b) Act regulating procedures for the election of the Council for the Brussels-Capital Region

1 (c) Royal Decree amending the Royal Decree of 6 November 1987 implementing article 25 of the Act of 21 August 1987, amending the Act of 26 July 1971 on the organization of towns and cities and federations of communes and containing provisions relating to the Brussels Region

1 (d) Royal Decree establishing the criteria for allocation of the supplement to the Communes Fund under the budget of the Ministry of the Brussels Region for 1988

2. Act amending the Special Act of 8 August 1980 on institutional reforms

3. Decree concerning special assistance to young persons

3 (a) Decree supplementing the Decree of 27 June 1985 concerning special assistance to young persons

3 (b) Judgement of the Court of Arbitration

3 (c) Flemish Executive Order establishing the date of entry into force of the Decree of 27 June 1985 concerning special assistance to young persons

3 (d) Flemish Executive Order amending the Flemish Executive Order of 20 July 1988 and establishing the date of entry into force of the Decree of 27 June 1985 concerning special assistance to young persons

3 (e) Flemish Executive Order on the establishment and functioning of welfare committees for young persons, the social services and the administrative secretariat

3 (f) Flemish Executive Order on the establishment and functioning of the mediation commission for special assistance to young persons and the administrative secretariat

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* The annexes, as submitted by the Belgian Government, may be consulted at the United Nations Centre for Human Rights.

3 (f) bis	Flemish Executive Order amending the Flemish Executive Order of 20 July 1988 on the establishment and functioning of the mediation commission for special assistance to young persons and the administrative secretariat
3 (g)	Idem.
3 (h)	Date of entry into operation of the welfare committees (Flemish text)
3 (i)	Flemish Executive Order on the establishment, membership and functioning of the commission established under article 24 of the Decree of 27 June 1985 concerning special assistance to young persons
3 (j)	Flemish Executive Order amending the Flemish Executive Order of 12 October 1988 on the establishment, membership and functioning of the commission established under article 24 of the Decree of 27 June 1985 concerning special assistance to young persons
4.	Act lowering the age of majority to 18
5.	Royal Decree establishing the Advisory Committee on disputes concerning equal treatment of men and women in the public service
5 bis	Royal Decree amending the Royal Decree of 2 March 1984 establishing the Advisory Committee on disputes concerning equal treatment of men and women in the public service
6.	Royal Decree on measures to foster equal opportunities for men and women in the private sector
7.	Practical guide to positive action in firms
7 bis	Additional information on positive action in firms
7 ter	Overview of employees in the public sector
8.	Opinion of the Women's Employment Commission on the employment of women (support for positive action)
9.	Belgium's reply to the United Nations questionnaire on the death penalty
10.	Organ Removal and Transplant Act
10 bis	Comments on the Organ Removal and Transplant Act
10 bis (a)	Act amending the Organ Removal and Transplant Act

10 bis (b) Royal Decree on consent by the donor or persons referred to in article 10 (2) of the Organ Removal and Transplant Act of 13 June 1986

10 bis (c) Royal Decree on consent to the removal of organs and tissue from living persons

10 bis (d) Royal Decree on compensation to living donors, as referred to in article 4 (2) of the Organ Removal and Transplant Act of 13 June 1986

10 bis (e) Royal Decree amending the Royal Decree of 30 October 1986 on consent by the donor or persons referred to in article 10 (2) of the Organ Removal and Transplant Act of 13 June 1986

10 bis (f) Royal Decree requiring the commune administrations to communicate to the Ministry of Health and the Family the information mentioned in article 10 (3) (a) and 4 (3) of the Organ Removal and Transplant Act of 13 June 1986 by the National Register Department

10 bis (g) Royal Decree on tissue banks, removal conservation, preparation, importation, transport, distribution and delivery of tissue

10 bis (h) Comments on articles 5, 6 and 7 of the Organ Removal and Transplant Act of 13 June 1986

11. Act amending certain provisions concerning rape

12. Executive Order on the approval and award of subsidies to persons and institutions providing training and supervisory services for the protection of young persons

13. Decree on the approval and award of subsidies to persons and institutions providing training and supervisory services for the protection of young persons

14. Extract from the summary record of the 821st meeting of the Human Rights Committee (CCPR/C/SR.821, paras. 53-59)

15. French Community Executive Order on the organization of institutions for observation and supervised education in the French Community

16. Extract from the summary record of the 821st meeting of the Human Rights Committee (CCPR/C/SR.821, para. 61)

17. Act on the entry, temporary and permanent residence and removal of aliens

18. Act amending, with particular reference to refugees, the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens

19. Act on reasons for penalties, amending article 195 of the Criminal Investigation Code and article 207 of the Army Code of Procedure

20. Amendment to article 17 of the Constitution

21. Special Act on the Court of Arbitration

22. Act recognizing administrative bodies managing the temporal affairs of the Orthodox Church

23. Royal Decree organizing councils of the Orthodox Church

24. Act amending the Act of 2 August 1974 concerning salaries for certain public persons and ministers of worship

25. Extract from the summary record of the 821st meeting of the Human Rights Committee (CCPR/C/SR.821, para. 65)

26. Extract from the summary record of the 821st meeting of the Human Rights Committee (CCPR/C/SR.821, para. 66)

27. Comments of the Civil Service Department concerning freedom of association in the public services

27 (a) Article 20 of the Belgian Constitution

27 (b) Act of 24 May 1921 guaranteeing freedom of association

27 (c) Act organizing relations between the public authorities and unions of staff members of such authorities

27 (c) bis Royal Decree amending the Royal Decree of 28 September 1984 implementing the Act of 19 December 1974 organizing relations between the public authorities and unions of staff members of such authorities

27 (d) Royal Decree amending the Act of 19 December 1974 organizing relations between the public authorities and unions of staff members of such authorities

27 (e) Act on the granting and payment of a union allowance to some members of workers in the public sector and unemployed persons put to work in that sector

27 (f) Royal Decree of 29 August 1985 containing the basic regulations under article 2 (1) (1) of the Act of 19 December 1974 organizing relations between the public authorities and unions of staff members of such authorities

27 (g) Opinion concerning official approval of trade union organizations. Implementation of the Act of 19 December 1974 organizing relations between the public authorities and unions of staff members of such authorities

27 (h) Opinion of 22 March 1985 concerning official approval of trade union organizations, published by the President of the Local Public Services Committee

27 (i) Opinion of 22 March 1985 concerning official approval of trade union organizations, published by the President of the National, Community and Regional Public Services Committee

27 (j) Overview of representative trade union organizations

28. Act adopting the Collective Bargaining Convention, No. 154, adopted at Geneva on 19 June 1981 by the International Labour Conference at its sixty-seventh session

29. Collective Labour Agreement No. 5, of 24 May 1971

30. Act concerning various aspects of the status of aliens and instituting the Belgian Nationality Code

31. Royal Decree establishing the membership and procedures of the Immigration Studies Commission

32. Act amending various legal provisions concerning filiation

32 (a) Act amending article 358 of the Civil Code

32 (b) Act amending various legal provisions concerning adoption

32 (c) Act on abandoned minors